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October 1, 2015

VIA ELECTRONIC FILING

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

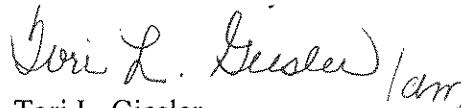
Re: Yanling Chen v. Metropolitan Edison Company
Docket No. C-2015-2502964

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections on behalf of Metropolitan Edison Company in the above-referenced matter. This document has also been served on the parties of record as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,


Tori L. Giesler

dln
Enclosures

c: Administrative Law Judge Joel H. Cheskis
Brian C. Wauhop, Esquire
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

YANLING CHEN

v.

METROPOLITAN EDISON COMPANY

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:
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Docket No. C-2015-2502964

NOTICE TO PLEAD

To: Yanling Chen

Pursuant to 52 Pa. Code § 5.101 you are hereby notified that if you do not file a reply to the enclosed Preliminary Objections of Metropolitan Edison Company within ten (10) days from service of this notice, the facts set forth by Metropolitan Edison Company in the Preliminary Objections may be deemed to be admitted, thereby requiring no other proof. All pleadings, such as a Reply to Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service to counsel for Metropolitan Edison Company, and where applicable, the Administrative Law Judge presiding over the case.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Dated: October 1, 2015



Tori L. Giesler

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

YANLING CHEN

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2015-2502964

**PRELIMINARY OBJECTION TO THE COMPLAINT OF
YANLING CHEN**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Metropolitan Edison Company ("Met-Ed" or the "Company"), by and through its counsel, Tori L. Giesler, files this Preliminary Objection pursuant to Section 5.101(a) of Pennsylvania Public Utility Commission ("Commission") regulations, 52 Pa. Code § 5.101(a)(1), and in support thereof, avers as follows:

I. Introduction

1. In her recently filed Formal Complaint, Yanling Chen ("Complainant") alleges that the Company "discriminated us" by removing two trees from the Complainant's property, but did not remove trees from a "neighbors'" property. (Compl. ¶ 4.)

2. As explained in greater detail below, the Complainant filed a nearly identical formal complaint in 2013 which is still pending before the Commission at Docket No. C-2013-2397061. As a result, the Company requests that this Preliminary Objection be granted and that the Commission dismiss the Formal Complaint with prejudice.

II. Background

3. Met-Ed is an electric distribution company certificated as a public utility permitted to operate within the Commonwealth in Pennsylvania.

4. On or about December 5, 2013, the Complainant and her husband filed a Formal Complaint with the Commission at Docket No. C-2013-2397061 (“2013 Complaint”), alleging an ongoing dispute over the Company’s removal of two trees growing in the right-of-way at the Service Location. Like the instant Formal Complaint, the 2013 Complaint requested, among other things, that the Commission review the matter and compensate the Complainant for the loss of the two trees which could include “replanting the same kind and same sized trees at the same location.” (2013 Complaint at ¶ 5).

5. On January 14, 2015, an evidentiary hearing in connection with the 2013 Complaint was held before Administrative Law Judge Joel H. Cheskis (“ALJ”). At the hearing, the Complainant disputed the removal of the two trees by the Company and the service provided to her by the Company. A copy of pages 1, 18, 21 and 24-25 of the January 14, 2015 Hearing Transcript before ALJ Cheskis regarding the 2013 Complaint is attached hereto as Exhibit A.

6. Further, during the evidentiary hearing in connection with the 2013 Complaint, the Complainant raised a claim of discrimination or unjust or prejudicial treatment of them by the Company against the Complainant and her husband. *See* Exhibit A.

7. On April 10, 2015, the ALJ issued an Initial Decision dismissing the 2013 Complaint and finding that the Complainant and her husband failed to satisfy their burden of proof to demonstrate that the Company violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff when removing two trees from their property. A copy of the Initial Decision dated April 10, 2015, is attached hereto as Exhibit B.

8. On April 29, 2015, the Complainant and her husband filed Exceptions to the Initial Decision.

9. On May 11, 2015, the Company filed Replies to Exceptions.

10. To date, a final Commission order has not been issued that therefore the 2013 Complaint is still pending and the reasonableness of the Company's vegetation maintenance services at the Service Location is already being litigated.

11. On or about August 31, 2015, the Complainant filed a Formal Complaint with the Commission against Met-Ed at the above-captioned docket disputing the removal of the two trees by the Company and the service provided to her by the Company and requesting that that the Commission direct the Company to "plant trees they removed." (Compl. ¶¶ 4, 5.)

12. On or about September 11, 2015, the Formal Complaint was served on Met-Ed.

13. Met-Ed is timely filing its Answer and New Matter contemporaneously with this Preliminary Objection.

III. Argument

14. The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

15. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

16. The Commission's procedural regulations allow a party to object to pleadings due to pendency of a prior proceeding. *See* 52 Pa. Code § 5.102(a)(6).

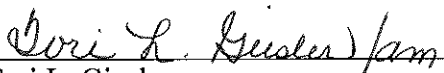
17. Accordingly, and assuming all of the well-pleaded facts contained in the Formal Complaint are true, the Complainants have not stated a claim within the Commission's jurisdiction to adjudicate because, as a matter of law, the acts complained of are identical to a prior proceeding which is currently pending before the Commission.

IV. Conclusion

WHEREFORE, for the foregoing reasons, Metropolitan Edison Company respectfully requests that the Commission: (i) grant its Preliminary Objection and dismiss the Formal Complaint because the Complainant already has a prior complaint pending before the Commission on identical allegations; and (ii) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: October 1, 2015



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Counsel for Metropolitan Edison Company

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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Yanling Chen and
Jianming Hu,
v.
Metropolitan Edison
Company
Further Telephonic
Hearing

Docket No.: C-2013-2397061

Pages 1 - 84

Commonwealth Keystone Building
400 North Street
Plaza Level
Harrisburg, Pennsylvania
Wednesday, January 14, 2015
Commencing at 10:07 a.m.

BEFORE:

JOEL H. CHESKIS, Administrative Law Judge

APPEARANCES:

YANLING CHEN and JIANMING HU, Pro Se
For the Complainant

BRIAN C. WAUHOP, Esquire
Buchanan Ingersoll Rooney
409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
For the Respondent

Reporter: Karen J. Brown

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by the certifying agency.

1 about, Your Honor.

2 JUDGE:

3 Yes, it is.

4 A. Right. So the first, Attachment A involves the
5 easement. The second attachment is a hand drawing
6 which was given to us by Met-Ed, I believe Mr. Wirs,
7 when he came to meet with us. And so we believe that
8 one was actually not official record because Attachment
9 B does not match official Attachment A, which is the
10 official record. Attachment C is, we went to the Derry
11 Township Community Development office and talked to Mr.
12 Emerick. And, in fact, we did suggest Met-Ed to meet
13 with him. And Mr. Emerick, in fact, offered to meet
14 with Met-Ed.

15 But the Company never really chose to do that, to
16 try to resolve the easement issue. And Attachment C
17 was the e-mail from Mr. Emerick stating to that fact.

18 Attachment D is information that we bought those
19 two trees, and it shows what the mature size of those
20 trees would be. And Attachment E is a Google map which
21 we provided. I think the point of that is, obviously,
22 the Company, with the height at the time, if they
23 wanted to resolve the issue with our next-door neighbor
24 trees, as you can see from the map, still stand there.
25 But they just decided to cut our trees a long time ago.

1 Well, we'll get to you in a second. I
2 think what's the writing on Attachment E, the top line
3 circles a few of the trees. And it's says, Neighbor's
4 trees.

5 Then there's an arrow pointing to trees
6 below that that says, Our trees were cut. And then
7 there's writing below that that says, Closest power
8 line, and draws an arrow to what appears to be a line.

9 And, Mr. Hu, did you take this picture
10 that's Exhibit F?

11 A. I think my wife took that -- Attachment E, Your
12 Honor, or Attachment F.

13 JUDGE:

14 F.

15 A. F. Okay. Attachment F, my wife took the picture.

16 JUDGE:

17 Okay. Mr. Wauhop, I understand your
18 concerns about these exhibits. I am going to admit
19 them all into the record with the understanding that,
20 you know, again, this e-mail that's Attachment C is not
21 going to be given a lot of weight, if any.

22 And I'm not overly concerned about the
23 authentication issues with regards to some of the other
24 attachments. But at this point, I think we're just
25 going to include all of them as Attachments A through

1 would send me something; but we never, except that hand
2 drawing easement, which we all know is not correct.

3 And he promised to call me and never meet again
4 once he do the measurement. But he failed to do that.
5 So I think the Company is trying to meet with us is not
6 honest.

7 Attachment D is the trees I affirmed from Lowe's
8 which has detailed written information about the tree
9 size. Mr. Wirs arbitrarily told me on the phone my
10 trees can grow up to 80 feet which interfere with wire.
11 So that's their assumption to remove my trees. But the
12 fact is, that's not the -- that's not -- that's not
13 right.

14 Attachment E, the Google map, my tree -- I -- I
15 just want to point out, the Company has -- they knew
16 from the very beginning they have the measurement of
17 the easement. They have enough time to solve the issue
18 before they remove my tree.

19 However, they failed to do that; because my
20 neighbors' trees are still there. So we feel that the
21 Company did not treat us fairly, didn't even try to
22 communicate with us to solve the problem before they
23 removed our trees.

24 So that means there's another reason they failed
25 to conduct a proper vegetation management procedure in

1 a reasonable, fair and honest manner.

2 Number (sic) F is the size of the tree they
3 removed. I took a photocopy and attached to that a
4 package here and sent it to Company and the Company
5 lawyer. The Company, Met-Ed.

6 So in general, the Met-Ed failed to communicate
7 with us and they did not follow the proper vegetation
8 management procedure, they failed to conduct the
9 vegetation management in a reasonable, fair and honest
10 manner. That's all I want to say.

11 JUDGE:

12 Okay. Thank you very much, Ms. Chen.

13 Mr. Wauhopp, do you have any questions for
14 her?

15 ATTORNEY WAUHOP:

16 Yes.

17 CROSS EXAMINATION

18 BY ATTORNEY WAUHOP:

19 Q. Ms. Chen, did you speak to Mr. Wirs over the
20 telephone?

21 A. Yes, I did.

22 Q. How many times?

23 A. Mr. Wirs seemed really hard to find. I sometimes
24 left a message, and sometimes I talk to him. The first
25 time I talked to him was on November 11.

without notification and that the Company representative refused to speak with them about the matter and hung up on them. The Complainants requested that a representative of the Company meet with the township development director to discuss the easement at issue because there are discrepancies between the Company's easement and the easement on record at the township. The Complainants further sought to have the easement line re-measured by a certified third party and to be reimbursed for the market value of the trees that Met-Ed cut down. The Complainants attached several documents to their Complaint, including a copy of the easement at issue.

On January 6, 2014, Met-Ed filed an Answer to the Complaint. In its Answer, Met-Ed admitted that it removed two trees from the Complainants' property as part of an easement held by the Company and denied the validity of the documents the Complainants attached to their Complaint. Met-Ed concluded its Answer by requesting that the Complaint be dismissed with prejudice.

Also on January 6, 2014, Met-Ed filed a Preliminary Objection. In its Preliminary Objection, which was accompanied by a Notice to Plead, Met-Ed averred that the Complainants are not disputing the Company's standards and procedures for maintaining their lines but are seeking the adjudication of the property dispute. Met-Ed averred, among other things, that the Commission does not have jurisdiction to determine property rights controversies arising from and relating to an existing easement. Met-Ed concluded its Preliminary Objection by requesting that the Commission dismiss the formal Complaint because the Commission is without jurisdiction to interpret and enforce a private written agreement between a customer and a utility.

On January 10, 2014, the Complainants filed an Answer to Met-Ed's Preliminary Objection. In their Answer, the Complainants disputed claims made by the Company regarding notice they received prior to the trees being removed.

On February 12, 2014, the Commission issued a Telephonic Hearing Notice establishing an Initial Telephonic Hearing for this matter for Thursday, March 27, 2014 at 10:00 a.m. and assigning me as the Presiding Officer.

On March 3, 2014, an Order Granting in Part and Denying in Part Preliminary Objection was issued. The Order determined that issues regarding the scope and validity of the easement held by Met-Ed over the Complainants' property, as well as the request for money damages, would be stricken from the Complaint, but that the remaining issues raised in the Complaint would be heard during the hearing. Also on March 3, 2014, a Prehearing Order was issued setting forth the various procedures that would be followed during the hearing.

On March 21, 2014, counsel for Met-Ed indicated that the parties to the proceeding agreed that a hearing on this matter would be premature at that point due to the fact that they were hopeful that the matter could be resolved informally. As such, the parties requested a 90-day continuance of the hearing so that the parties could attempt to resolve the matter. That request was granted via Order dated March 21, 2014 and a Cancellation Notice was issued formally cancelling the hearing scheduled for March 27, 2014. Subsequently, the parties made two additional requests for continuance to pursue settlement which were granted via Orders dated May 30, 2014 and July 24, 2014.

On November 10, 2014, a Hearing Cancellation/Reschedule Notice was issued establishing an Initial Telephonic Hearing for this case for Wednesday, December 3, 2014. Prehearing Order #2 was issued on November 14, 2014 confirming that hearing date and reminding the parties that the provisions of the Prehearing Order dated March 3, 2014 remained in place.

On December 3, 2014, the Initial Telephonic Hearing convened as scheduled. Yanling Chen and Jianming Hu appeared *pro se*. Brian Wauhopp, Esquire appeared on behalf of Met-Ed. The parties were given an opportunity to have settlement discussions prior to going on the record. Following that discussion, the parties indicated that they reached a settlement and that the Company would be filing a Certificate of Satisfaction. No hearing was held. The Certificate of Satisfaction was filed with the Commission on December 10, 2014.

However, on December 16, 2014, the Complainants filed an Objection to the Certificate of Satisfaction. As a result, a Further Telephonic Hearing was scheduled for Wednesday, January 14, 2015.

On January 14, 2015, the Further Telephonic Hearing was held, as scheduled. Again, Yanling Chen and Jianming Hu appeared *pro se*. Both Complainants presented oral testimony and together sponsored six exhibits that were admitted into the record. Again, Brian Wauhopp, Esquire, appeared on behalf of Met-Ed. Mr. Wauhopp presented one witness who sponsored seven exhibits that were admitted into the record. A transcript of the hearing comprising 83 pages and various exhibits was created and submitted to the Commission on January 30, 2015.

On February 12, 2015, the Complainants submitted a document with accompanying attachments asking that the attachments be admitted into the record as late-filed exhibits. The Company was advised that the filing would be treated as a Motion for admission of late-filed documents. On February 25, 2015, Met-Ed filed an Answer to the Motion requesting that the Motion be denied. The late-filed exhibits were admitted into the record via Order dated March 3, 2015, at which time the record in this case closed.

The Complaint is now ready for disposition. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainants in this case are Yanling Chen and Jianming Hu.
2. The Respondent in this case is Metropolitan Edison Company.
3. The Service Address is 1126 Chadwick Circle, Hummelstown, Pa.
4. Met-Ed holds an easement over the Complainants' property. Tr. 52.

5. Met-Ed removed two trees from the Complainants' property. Tr. 15.
6. Complainant Exhibit A is a copy of the recorded easement in Dauphin County Court of Common Pleas dated August 14, 1969. Tr. 18, 23, 52-54; Complainant Exh. A; Met-Ed Exh. No. 1.
7. Complainant Exhibit B is a drawing of the easement given to the Complainants by a Met-Ed employee. Tr. 18, 23; Complainant Exh. B.
8. Complainant Exhibit C is an exchange of emails from Charles W. Emerick, Jr., Director of Community Development for Derry Township, to the Complainants dated November 25, 2013 regarding the easement. Tr. 18; Complainant Exh. C.
9. Complainant Exhibit D is a copy of the information tags attached to the trees that Met-Ed removed from the Complainants' property detailing the specifications of the trees. Tr. 18, 24; Complainant Exh. D.
10. Complainant Exhibit E is a print out from Google maps of the Complainant's property and surrounding properties. Tr. 18, 24, 30; Complainant Exh. E.
11. Complainant Exhibit F is photographs showing the diameter of the tree stumps after the trees were removed by Met-Ed. Tr. 18-19, 25; Complainant Exh. F.
12. Scott Wirs has worked in utility vegetation management for thirty-six (36) years with utilities across the United States, is a certified arborist and has worked with FirstEnergy since 2007 ensuring that 1,500 miles of transmission lines comply with the Company's transmission vegetation management plan. Tr. 32-35.
13. Mr. Wirs visited the Complainants' property on November 11, 2013 and December 14, 2013. Tr. 35.

14. 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. Tr. 36.

15. The TVMP operates on a four-year maintenance cycle and requires incompatible vegetation be removed. Tr. 36.

16. New federal regulations were established after the blackouts of 2003 that impose fines on utilities for outages caused by vegetation. Tr. 36-37.

17. Met-Ed Exhibit Number 5 is a copy of the Standard FAC-003-1 TVMP. Tr. 37; Met-Ed Exh. No. 5.

18. Met-Ed relies on the American National Standard Institute (ANSI) 300 for tree-care operations, trees, shrubs, maintenance and standard practices. Tr. 38.

19. Met-Ed Exhibit Number 3 is the ANSI 300 standard that was first approved in 2006. Tr. 38-39; Met-Ed Exh. No. 3.

20. Met-Ed Exhibit Number 4 is the updated ANSI 300. Tr. 39; Met-Ed Exh. No. 4.

21. Met-Ed's TVMP is designed in accordance with the standards in ANSI 300. Tr. 39.

22. 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. Tr. 40.

23. 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. Tr. 40-41.

24. The transmission line at issue in this case is the 1094 line corridor, is 230 kilovolts (kv), is approximately 6.9 miles long and runs from Middletown to Hummelstown. Tr. 41-42.

25. If vegetation comes in contact or interferes with the line conductor it would create a fault or arc to the vegetation causing an outage and a fine will be imposed on Met-Ed. Tr. 43-44.

26. A line can arc 5-15 feet and vegetation managers must ensure that vegetation never gets anywhere close to that arcing distance, including factoring in ambient temperatures. Tr. 44-46.

27. The trees growing on the Complainants' property were Autumn Blaze trees and were approximately 15 feet tall at the time they were removed. Tr. 46-47.

28. An Autumn Blaze tree is a hybrid of a Silver Maple tree and a Sugar Maple tree. Tr. 47.

29. A Silver Maple tree can grow to 80 feet tall. Tr. 48.

30. An Autumn Blaze tree can become large enough to interfere with a transmission line and is therefore incompatible with the TVMP. Tr. 48.

31. Met-Ed would allow trees that grow to 15-20 feet in the location where the Complainants' trees were removed. Tr. 49.

32. Leaving vegetation management in the hands of the property owner through pruning jeopardizes the safety and reliability of the transmission line and requires the Company to police such activities to prevent outages. Tr. 49-51.

33. The easement Met-Ed has over the Complainants' property allows Met-Ed to remove everything from that strip of land, as well as trim, cut and remove trees. Tr. 52-53; Met-Ed Exh. No. 1.

34. The easement includes both a 90-foot-wide measurement as well as a 95-foot-wide measurement. Tr. 54.

35. The easement requires the Company contractors and forestry representatives to contact a landowner prior to completing any vegetation management in the right-of-way. Tr. 54.

36. Mr. Wirs had several phone conversations with Ms. Chen beginning in September, 2013 and personally met with the Complainants on November 11, 2013. Tr. 55.

37. Met-Ed Exhibit Number 2 is a copy of the Met-Ed Engineering Plan and Profile Drawing regarding the easement over the Complainants' property. Tr. 56-57; Met-Ed Exh. No. 2.

38. On November 11, 2013, Mr. Wirs gave the Complainants a copy of the easement and drawings. Tr. 56-57; Met-Ed Exh. Nos. 1 and 2.

39. Met-Ed's Engineering Plan and Profile Drawing show an original width of the easement of 75 feet that was subsequently extended by a prior owner of the property. Tr. 56-58; Met-Ed Exh. No. 2.

40. Mr. Wirs asked the Met-Ed survey department to measure the right-of-way and that measurement occurred on November 22, 2013. Tr. 59.

41. The survey revealed that two trees were within the easement and Mr. Wirs informed the Complainants that both trees would have to be removed. Tr. 59-60.

42. A tree 50 feet in height is incompatible with Met-Ed's TVMP. Tr. 65-66.

43. Met-Ed gives property owners the option to relocate trees that are incompatible. Tr. 71.

44. Complainant Exhibit Number 1 depicts an easement over the Complainants' property that is 90 feet wide. Complainant Exh. No. 1.

45. Complainant Exhibit Number 2 is a survey of the easement over the Complainants' property. Complainant Exh. No. 2.

46. Complainant Exhibit Number 3 includes pictures of Ms. Chen standing next to the transmission tower to estimate how high the tower is. Complainant Exh. No. 3.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, the Complainants seek a finding that Met-Ed performed improper vegetation management and failed to provide proper notice when it cut down two trees on their property. The Complainants also seek a finding that the Company treated them inappropriately as part of the process of removing the trees. The Complainants, therefore, have the burden of proof.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant.

Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa. Cmwlth 1982).

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

In this case, the Complainants argued that Met-Ed inappropriately removed trees from their property because the trees were not within the easement that the Company held over the property. The Complainants provided evidence in support of their position that the Company had incorrectly determined the parameters of the easement, thus leading to the Complainants' position that the Company performed unreasonable vegetation management on this part of its transmission lines. In addition, the Complainants argued that the Company did not treat them properly throughout the process, including hanging up on them and not giving notice so they could be present when the easement lines were drawn. The Complainants presented several documents that were admitted into the record regarding the details of the easement and how, in their opinion, the specific trees in question would not interfere with Met-Ed's transmission line.

In response, the Company presented the testimony of Scott Wirs, a certified arborist who worked with the Complainants on behalf of the Company. Mr. Wirs testified regarding the Company's Transmission Vegetation Management Program (TVMP), including how it complies with applicable state and federal laws and regulations and how the program is applied to the Complainants' property. Mr. Wirs testified that the trees on the Complainants' property were incompatible with the TVMP and had to be removed so that the Company can satisfy its obligation to provide safe, adequate and reliable electric distribution and transmission service. Mr. Wirs also sponsored several exhibits that were admitted in to the record in support of the Company's position that the Complaint should be dismissed.

As noted in the Order Granting in Part and Denying in Part the Company's Preliminary Objections issued in this case on March 3, 2014, it is well established that the Commission only has those duties, powers and responsibilities as expressly, or by necessary implication, given to it by the General Assembly and that the Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. Pub. Util. Comm'n., 43 A.2d 348 (Pa. Super 1945). Allegations relating to property rights and the interpretation of a valid right of way agreement are exclusively within the jurisdiction of the Courts of Common Pleas. There is substantial precedent providing that the Commission does not have jurisdiction to determine the scope and validity of an easement. *See e.g.*, Fairview Water Co. v. Pa. Pub. Util. Comm'n., 502 A.2d 162 (Pa. 1985). Therefore, the request in the Complaint to have a Company representative meet with the township community development director to discuss the scope and validity of the easement and to have a certified third-party re-measure the easement line, were stricken from the Complaint because they are beyond the scope of the Commission's jurisdiction. Those issues may be raised in the County Court of Common Pleas.

The Commission does, however, have jurisdiction over matters involving vegetation management within a right of way that warranted denying Met-Ed's Preliminary Objection in part and allowing the Complainants to proceed to a hearing. West Penn Power Company v. Pa. P.U.C., 578 A.2d 75 (Pa. Cmwlth 1990) (West Penn) (affirming the Commission's decision to impose a fine on the utility for the removal of 74 trees from a customer's property). In West Penn, the Commonwealth Court stated:

Although West Penn has a right of way agreement dated December 11, 1948, which permits West Penn 'to cut and trim or remove trees and shrubbery whenever necessary ...' we agree with the commission that substantial evidence exists to support the finding that West Penn failed to conduct the right of way vegetation management on Brown's property in a reasonable manner.

* * * *

Although the right of way agreement permits West Penn to engage in vegetation maintenance, section 1501 of the Code requires

public utilities to provide service which is adequate, efficient, safe and reasonable.

Id. at 77. The Court noted that the Public Utility Code defines “service” as “any and all acts done, rendered or performed, and any and all things furnished or supplied, and any and all facilities used, furnished or supplied by public utilities.” Id., *citing*, 66 Pa.C.S. §102.

The Court concluded that: “The PUC is correct in concluding that vegetation maintenance is a service and that West Penn’s clearing of the entire 40 foot right of way and West Penn’s removal of trees outside of the right of way did not constitute reasonable and adequate service.” Id.; *see also*, PECO Energy Company v. Township of Upper Dublin, 922 A.2d 996 (Pa. Cmwlth 2007)(Commission possesses the sole authority to regulate a public utility’s vegetation management practices in its service territory) and Popowsky v. Pa. P.U.C., 653 A.2d 1385 (Pa. Cmwlth 1985)(vegetation maintenance constitutes a utility service and must be performed in a safe, adequate, reasonable and efficient manner); *see also*, 66 Pa. C.S. § 2802(20). The Court concluded, in part, that “public utility service embraces vegetation management.” Id.

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 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.

The Complainants argued, among other things, that Met-Ed “arbitrarily insisted that our trees were going to grow to 80 feet, which would interfere with the power line. But we showed evidence to them that our trees, they only grow up to 40, 50 [feet].” Tr. 11; *see also*, Tr. 22-23, 26. Such evidence included a copy of the information tag that accompanied the trees when they were planted that indicated that the trees would grow to an average size of 50 feet and the Complainants’ estimation of the height of the wires on Met-Ed’s transmission line. Complainant Exh. D and Complainant Exh. 3. The Complainants then performed a calculation that they argued demonstrated that, even at their anticipated full height of the trees of 50 feet, the top of the trees would be approximately 66 feet from the transmission line if the trees were to fall down. Complainant Exh. 3. The Complainants argued that the trees would not touch the line and, therefore, were not incompatible with Met-Ed’s vegetation management plan. The Complainants, therefore, argued that Met-Ed performed unreasonable vegetation management and violated the Public Utility Code by removing their trees.

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 through effective vegetation and line clearance. Tr. 36. Mr. Wirs provided extensive testimony regarding the removal of incompatible vegetation, noting that “incompatible” essentially means vegetation that can grow too close to the transmission lines. Tr. 40. Mr. Wirs sponsored and discussed various standards that are used to determine how close vegetation can get to transmission lines before it is “too close.” *See e.g.*, Tr. 37-38; Met-Ed Exh. No. 3 and 5. Most significantly, Mr. Wirs noted the impact of various factors that are considered when determining whether vegetation is too close to transmission lines. This includes arcing, where electricity can arc 5-15 feet, and ambient temperatures such that line sag increases under certain weather conditions. Tr. 43-46. 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. Tr. 48. In contrast, Met-Ed only allows trees that grow to 15-20 feet in the location where the Complainants’ trees were removed. Tr. 49. Mr. Wirs added that making land owners responsible to prune a tree that may otherwise be incompatible jeopardizes the safety and reliability of the transmission line and requires the Company to police such activities to prevent outages. Tr. 49-51. Mr. Wirs testified that the

Company provided the Complainants ample notice prior to removing the trees and did not treat the Complainants inappropriately. Tr. 54-56, 60-61.

Met-Ed's adoption of stringent vegetation management plans for its transmission lines is rooted in the history following a widespread power outage in 2003 after which the attention of the Federal government focused sharply on the behavior of the operators of transmission lines. Congress passed the Energy Policy Act of 2005 with the authorization for a new electric reliability organization responsible for creating and enforcing mandatory reliability standards. The North American Electric Reliability Corporation (NERC) assumed watchdog responsibility under the Federal Energy Regulatory Commission (FERC) for federal enforcement of reliability standards, which include mandatory vegetation clearance standards. The clearance standards, known collectively as FAC-003-1, apply to transmission lines rated at 200kV and higher, as well as any lower-voltage lines designated as critical to reliability by regional reliability organizations that report to NERC. FAC-003-1 sets minimum clearance distances as "no less than those set forth in the Institute of Electrical and Electronics Engineers (IEEE) Standard 516-2003 ... and as specified in its Section 4.2.2.3, Minimum Air Insulation Distances without Tools in the Air Gap."

The constrictions required under FAC003 can be justified, as they apply only to transmission lines rated 200 kV and above, or those lower-voltage lines that are critical to the system. NERC itself understands the distinction:

This standard focuses on transmission lines to prevent those vegetation related outages that could lead to Cascading. It is not intended to prevent customer outages due to tree contact with lower voltage distribution system lines. For example, localized customer service might be disrupted if vegetation were to make contact with a 69kV transmission line supplying power to a 12kV distribution station. However, this standard is not written to address such isolated situations which have little impact on the overall electric transmission system.

See e.g., Richard and Sandy Lehet v. PPL Electric Utilities Corp., Docket No. C-2014-2449983, Initial Decision (dated Feb. 25, 2015) at 11; *see also*, Met-Ed Exh. No. 5. It is significant that the line at issue in this proceeding is rated at 230 kV and impacts the overall reliability of the

electric grid because it is a nearly seven mile transmission line. The line across the Complainants' property is not a lower voltage distribution line that impacts an isolated area. Therefore, the stricter standards apply.

In light of this background, the testimony and evidence presented by Mr. Wirs is persuasive. Met-Ed has thousands of miles of transmission lines to maintain throughout the network. Reducing or eliminating outages is an important public benefit. Mr. Wirs testified that its TVMP complies with state and federal mandates that require effective vegetation management and line clearance to reduce outages. Tr. 36-37; Met-Ed Exh. Nos. 3 and 4. Mr. Wirs added that compatible trees grow to a maximum of 15-20 feet under transmission lines and discussed various issues that may cause interruption of transmission lines. Although the Complainants' presented evidence that the trees in question would reach an average of 50 feet in height, it is not unreasonable that Met-Ed's TVMP would prohibit vegetation that grows higher than 15-20 in the area where the Complainants' trees were located. This is true regardless of whether the trees are within the easement. With 1,500 miles of transmission lines, it is not unreasonable that Met-Ed's TVMP would prohibit vegetation higher than 15-20 feet to ensure that electric service is provided in an adequate and efficient manner. If Met-Ed were to allow vegetation with maximum heights greater than 15-20 feet throughout 1,500 miles of transmission lines, it would have to monitor the lines more frequently. This would be more costly and less efficient. Cost-efficiency and consistency are important and support finding that Met-Ed's actions with regard to the Complainants was reasonable.

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.

The Commission takes seriously its responsibility to ensure electric reliability. In particular, the General Assembly mandated that the Commission ensure levels of reliability that were present prior to the restructuring of the electric utility industry continue in the new competitive market. 66 Pa.C.S. § 2802(12); *see also*, Amended Reliability Benchmarks and Standards for the Electric Distribution Companies, Docket No. M-00991220, Order (entered May 11, 2004); Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa.Code Chapter 57, Docket Number L-00030161, Final Rulemaking Order (entered May 20, 2004). In response to this legislative mandate, the Commission adopted various regulations designed to ensure the continued safety, adequacy and reliability of transmission and distribution of electricity in the Commonwealth. *See e.g.*, 52 Pa.Code § 57.191-197. Met-Ed's TVMP, and its application of the TVMP in this case, are consistent with this legislative and regulatory precedent and are, therefore, reasonable.

As such, the Complainants have failed to satisfy their burden of demonstrating that Met-Ed has violated the Public Utility Code, a Commission Order or regulation or a Commission-approved Company tariff with regard to vegetation management. This portion of the Complaint will be dismissed.

With regard to the Complainants' arguments that the Company failed to treat them properly throughout this process, including hanging up on them and failing to provide them adequate notice so that they could be present when the easement lines were drawn on their property, these arguments will also be rejected.

The Complainants testified that they wanted the Company to talk to the township but that "the Company representative never really tried to resolve this issue before they cut down our trees." Tr. 11; *see also*, Tr. 16. The Complainants added, "when we talked to the customer service, their attitude towards us, we mentioned in the formal complaint before, we feel the

Company was very rude [and] told us they were happy that our trees were gone.” Tr. 12; *see also*, Tr. 29 (claiming that the Company laughed at them, hung up on them and was rude). The Complainants believed they were treated unfairly and in a dishonest way. Tr. 77-78. The Complainants added that Mr. Wirs agreed to meet with them prior to measuring the easement but he did not. Tr. 24, 63. The Complainants also indicated that they had difficulty reaching Mr. Wirs by telephone. Tr. 25.

In response, Mr. Wirs testified on behalf of the Company that the Company’s contractors and forestry representatives are required to make contact with property owners to inform them that vegetation management will be performed on their property. Tr. 54-55. If the property owners refuse vegetation management, as the Complainants did here, the Company attempts to resolve the matter with the property owner. Tr. 55. Mr. Wirs testified that he became involved with the Complainants when they filed a complaint in 2013, including having several phone conversations and visiting the property in November, 2013. Tr. 55-56. During that time, Mr. Wirs discussed the easement with the Complainants. Tr. 56-58. Mr. Wirs also told the Complainants that he would have a certified surveyor measure where the edge of the easement is. Tr. 59. Mr. Wirs had a follow up conversation with the Complainants in December, 2013. Tr. 59-60. Mr. Wirs added that at no time after the trees were removed did he laugh at the Complainants or belittle the fact that the trees were gone when talking with the Complainants. Tr. 60.

There are no Commission regulations establishing a standard of conduct for public utility employees. In the absence of specific regulations, Section 1501 of the Public Utility Code governs a public utility’s obligation to provide reasonable service to its customers. 66 Pa.C.S. § 1501. Section 1501 provides, in pertinent part, that “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities.” 66 Pa.C.S. § 1501. In Gallagher v. Bell Telephone Co. of Pa., Docket No. F-8958314, Opinion and Order (entered September 23, 1992), the Commission held that a public utility had violated Section 1501 by allowing its customer service representatives to refuse to identify themselves to a complainant, by calling the complainant a rude name and by hanging up on the complainant. *Id.*; *see also*, Joel and Jill Haines v. PPL Electric Utilities Corporation, Docket No. F-002201447, Initial Decision (Final Order entered April

7, 2008); Michael Moffa v. Verizon Pennsylvania, Inc., Docket No. C-2010-2212745, Initial Decision (Final Order entered March 22, 2012).

Interactions between a customer and employees of a utility can be tense at times. Customers deserve to be treated with courtesy and respect at all times. The Complainants are clearly frustrated about the sequence of events that led to the removal of their trees. The Complainants' frustration likely has been exacerbated by how they believe they were mistreated by Met-Ed's employees. The Complainants may also be frustrated by the rigors of the legal process, which, in this case, has included numerous continuances and numerous failed attempts at settlement. The Complainants, however, have not provided substantial evidence that demonstrates that any actions by a Met-Ed employee constitute a violation of Section 1501. There is no evidence in this case, for example, that demonstrates that a Met-Ed employee refused to identify his or herself to the Complainants or that any employee called the Complainants a rude name. The Complainants testified that Mr. Wirs hung up on them but Mr. Wirs said he did not. The Complainants could have provided testimony that substantiated their testimony, such as requesting in discovery a copy of the transcript of any recorded calls, but did not do so.

With regard to the Complainants' argument that they were not provided sufficient notice before the tree was removed, nearly a year elapsed since the time Met-Ed's contractor first spoke with the Complainants in January, 2013 and when the trees were removed in December, 2013. During that time, Mr. Wirs spoke with the Complainants on the phone and visited the property at least twice. *See e.g.*, Tr. 26, 35, 55-56. During that time, the Complainants could have had the property surveyed by their own surveyor, filed a Complaint with the Commission or taken other legal action in the Court of Common Pleas regarding the easement. While it is clear that the Complainants approached their township supervisor in an attempt to resolve this issue, *see*, Complainants Exhibit C, it cannot be said that the Complainants did not have sufficient notice that the trees would be removed.

As such, the Complainants have failed to satisfy their burden of demonstrating that Met-Ed has violated the Public Utility Code, a Commission Order or regulation or a Commission-approved Company tariff with regard to how they were treated by Met-Ed's

employees or the notice they were provided prior to the trees being removed. This portion of the Complaint will also be dismissed.

In conclusion, 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. As a result, although the Complainants may not have liked that Met-Ed removed two trees on their property, how they were removed and how they were treated throughout the process, the Complaint must be dismissed.

CONCLUSIONS OF LAW

1. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

2. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

4. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

5. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa. Cmwlth 1982).

6. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

7. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

8. The Commission only has those duties, powers and responsibilities as expressly, or by necessary implication, given to it by the General Assembly and must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. Pub. Util. Comm'n, 43 A.2d 348 (Pa. Super 1945).

9. Allegations relating to property rights and the interpretation of a valid right of way agreement are exclusively within the jurisdiction of the Courts of Common Pleas. Fairview Water Co. v. Pa. Pub. Util. Comm'n, 502 A.2d 162 (Pa. 1985) (the Commission does not have jurisdiction to determine the scope and validity of an easement).

10. The Commission has jurisdiction over matters involving vegetation management within a right of way. West Penn Power Company v. Pa. P.U.C., 578 A.2d 75 (Pa. Cmwlth 1990).

11. The Public Utility Code defines “service” as “any and all acts done, rendered or performed, and any and all things furnished or supplied, and any and all facilities used, furnished or supplied by public utilities.” 66 Pa.C.S. §102.

12. The Commission possesses the sole authority to regulate a public utility’s vegetation management practices in its service territory. PECO Energy Company v. Township of Upper Dublin, 922 A.2d 996 (Pa. Cmwlth 2007).

13. Vegetation maintenance constitutes a utility service and must be performed in a safe, adequate, reasonable and efficient manner. Popowsky v. Pa. P.U.C., 653 A.2d 1385 (Pa. Cmwlth 1985).

14. The Commission must ensure levels of reliability that were present prior to the restructuring of the electric utility industry continue in the new competitive market. 66 Pa.C.S. § 2802(12).

15. Commission regulations ensure the continued safety, adequacy and reliability of transmission and distribution of electricity in the Commonwealth. 52 Pa.Code § 57.191-197.

16. Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities. 66 Pa.C.S. § 1501.

17. A public utility violated Section 1501 by allowing its customer service representatives to refuse to identify themselves to a complainant, by calling the complainant a rude

name and by hanging up on the complainant. Gallagher v. Bell Telephone Co. of Pa., Docket No. F-8958314, Opinion and Order (entered September 23, 1992).

18. The Complainants have failed to satisfy their burden of proof to demonstrate that Met-Ed violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff when removing two trees from their property.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint of Yanling Chen and Jianming Hu against Metropolitan Edison Company at Docket Number C-2013-2397061 dated December 5, 2013 is hereby dismissed.

2. That this matter be marked closed.

Date: March 30, 2015

/s/
Joel H. Cheskis
Administrative Law Judge

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

YANLING CHEN

v.

METROPOLITAN EDISON COMPANY

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:
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:
:

Docket No. C-2015-2502964


CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Preliminary Objections of Metropolitan Edison Company to the Formal Complaint of Yanling Chen upon the individual 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, as follows:

Yanling Chen
1126 Chadwick Circle
Hummelstown, PA 17036

Dated: October 1, 2015



Tori L. Giesler
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Reading, Pennsylvania 19612-6001
(610) 921-6658
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