

Secretary - PUC

From the Desk of:

Mindy J. Zied

1948 Kentwood Street

Philadelphia, PA 19116

mindyjziedcampbell@icloud.com

May 18, 2016

To:

Rosmary Chiavetta, Secretary
Commonwealth of Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Administrative Law Judge Angela T. Jones
Pennsylvania Utility Commission
801 Market Street, 4th Floor, Suite 4063
Philadelphia, PA 19107

Shawane L. Lee, Esquire
Exelon Business Services
2301 Market Street S23-1
Philadelphia, PA 19101

Courtesy Copy to: Governor Tom Wolf and an Attorney

Re: PUC Docket No. F-2015-2500342 - Please FILE THIS MOTION and Letter

Dear Secretary Chiavetta:

On May 5, 2016, I answered (within the 20 required days) the choice that we, as Complainant's chose to move forward as instructed in the April 21, 2016 ORDER issued in PUC Docket No. P-2015-2520474. I mailed said document to Administrative Law Judge Angela T. Jones (Fed Ex Ground #782999171119), which was received by 801 Market Street on May 6. (see this Motion, Exhibit #4, pgs. 31-33).

I also mailed a copy of said document to your office and the PECO Attorney, first class US Mail. (see this Motion attached, Exhibit #3)

In an ORDER, dated May 10, 2016, (see here Exhibit #1, Motion attached) by ALJ Jones, she stated that she forwarded said document which was mailed out on May 5, 2016 to your office, where ALJ Jones said she filed it with your office on May 10. (see this Motion, pg. 11, second paragraph)

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

However, in an attempt to access not only the ORDERS pertaining to my case, on the PUC website, (since we do not file electronically), not only was I not able to see "any" ORDERS filed, and I do not see the May 5, 2016 document which ALJ Jones stated she sent over to your office to be filed¹.

I am guessing that I am doing something wrong in trying to get these documents filed, because the May 5 document I sent to your office did not get filed by us, OR the Administrative Law Judge.

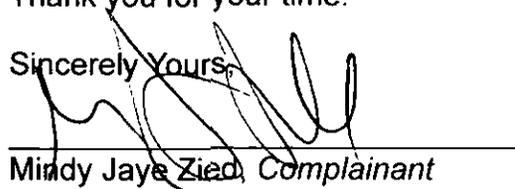
I am hoping that this problem can get straightened out, as it is my wish to have all of my documents which are permitted by the PUC to be filed and accessible publicly so that if I need to read one of them, I, myself will be able to.

With that being said, I have enclosed my (53) page MOTION dated May 18, 2016, with copies of this letter and my Motion to those stated here, and on the Certificate of Service attached, in the hope that this particular document will be filed in our case.

If there are any rules or regulations that I might have missed pertaining to persons who do not file electronically, any help or assistance in that area would be greatly appreciated.

Thank you for your time.

Sincerely Yours,


Mindy Jaye Zied, Complainant

Attached: 1) (53) page Motion dated May 18, 2016

- 2) Complainants' May 5, 2016 submission to the OALJ, PECO, and the Commission

¹ For this reason, I am including the May 5, 2016 response to the PUC April 21, 2016 ORDER (Docket #P-2015-2520474) here with the May 18, 2016 Motion so it can be filed with the Commission.

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MAY 18 2016

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of the Administrative Law Judge
Administrative Law Judge Angela T. Jones
801 Market Street, 4th Floor, Suite 4063
Philadelphia, PA 19107

59 PAGES

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Please File
in

Mindy Jaye Zied, and) F-2015-2500342
Binnie A. Zied, <i>Complainants</i>) (P-2015-2520474 - April 21, 2016)
v.)
PECO Energy Company,)
(an Exelon Corp.), <i>Respondents</i>)
_____)

COMPLAINANT'S MOTION FOR THE RECUSAL OF
ADMINISTRATIVE LAW JUDGE ANGELA T. JONES

W/AFFIDAVIT ATTACHED AS REQUIRED BY:
52 PA CODE §5.482

Mindy Jaye Zied
Binnie A. Zied
1948 Kentwood Street
Philadelphia, PA 19116
(717) 856-9607
mindyjziedcampbell@icloud.com

DATE: May 18, 2016

INTRODUCTION/PRIMARY BASIS FOR THIS RECUSAL

1. It was bad enough that we, as Complainants had to go through yet one additional process (Interlocutory Appeal) just because you, as an Administrative Law Judge had regulations already set forth by the Public Utilities Commission that were in place, which you could have used in affording us a reasonable accommodation request that we needed to go forward with the issues here, which created an additional strain on the disabilities we have, but you just chose not to do so.

2. The April 21, 2016 PUC ORDER requested us to choose the criteria which we had wished to proceed with. We, as the Complainants, Mindy J. Zied and Binnie A. Zied chose the 6th criteria that the PUC 4/21/2016 ORDER allowed as an "option" aside from the (5) other criteria you set forth in a prior order, which was to place everything in writing which was asserted in the paperwork dated and mailed out on May 5, 2016, which according to Fed Ex (see here at Exhibit #4) your office received at 11:40 p.m. on May 6, 2016.

3. On May 10, 2016, you - Administrative Law Judge Angela T. Jones issued an ORDER, which in our view is just "more of the same", when you glossed over the fact that we chose criteria Number (6), and in that ORDER gave us an ultimatum of choosing Choice Number #3 (a telephonic hearing), or Choice Number #4 (an in person hearing). Then in the May 10, 2016 ORDER, you directed us to make a decision between criteria Number #3 or Criteria Number #4, and to do so no later than May 24, 2016, which clearly re-routes the decision from "our choice" to "your choice", abusing the discretion of your office, and violating the language in the PUC ORDER issued and effective on April 21, 2016.

4. In all of the ORDERS which you have rendered, you have continually used the word "alleged" when identifying Mindy J. Zied's disability(s), when you had concrete evidence in the contrary showing that Ms. Zied's disability was an "established" condition.

5. For the reasons set forth in this Motion, including our left numbered margined paragraphs in Exhibit #5, which is the Affidavit required by 52 Pa Code §5.482, along with the other Exhibits included here, and based on our Constitutional right in being able to obtain a fair adjudication as to the issues we have presented, we choose for you, Angela T. Jones to recuse yourself from this case - Zied, et.al. v. P.E.C.O. - Case #F-2015-250034

BRIEF PROCEDURAL BACKGROUND

6. On May 10, 2016, an ORDER was set forth by the Office of Administrative Law Judge, ALJ Angela T. Jones, (Exhibit #1) following an ORDER set forth by the Public Utilities Commission (Exhibit #2) dated April 21, 2016¹, and in compliance with that ORDER, the Complainant's May 5, 2016 submission which was mailed to Ms. Shawane L. Lee, Counsel for PECO, the Secretary of the Public Utilities Commission, the Honorable Rosemary Chiavetta, (see receipt attached for both PECO attorney and copy sent to Harrisburg, PA to the Secretarycontinued next page

¹ An ORDER which was not only entered in on, but also adopted on April 21, 2016 by the Commission.

of the Public Utilities Commission, dated May 5, at Exhibit #3)² and to the Office of the Administrative Law Judge at 801 Market Street in Philadelphia, PA. (see receipt of acceptance and signed for by the OALJ on May 6, 2016 at Exhibit #4)

A RECUSAL IS WARRANTED AND AN AFFIDAVIT WITH SPECIFIC DETAILS IS ATTACHED

7. As required by 52 Pa Code §5.482 which relates to the disqualification of a presiding officer, an affidavit is attached here at Exhibit #5. The affidavit which includes numbered paragraphs shows the facts to support this Motion for Recusal. Those facts in Exhibit #5 are contained in an Affidavit which has alleged with particularity the meritorious and relevant fact as to the reasoning of the recusal of Administrative Law Judge, Angela T. Jones who should

² ORDER #6 by ALJ Jones incorrectly assumes and asserts that the Complainants did not mail the Secretary of the Public Utilities Commission (The Commission) a copy of their May 5, 2016 submission, which while it might have inadvertently been left off of the Certificate of Service, the receipt attached at Exhibit #3 shows otherwise. (see May 10, 2016 Order #6, page 2 which states: "The undersigned notes that this May 5, 2016 response was not filed with the Commission's Secretary". Although there is proof that ALJ Jones received the May 5, 2016 document by Complainant's on May 6, 2016, (see fedex receipt here at Exhibit #4) as shown it was signed for at 1:40 p.m., it took her until May 10, 2016 to forward it to the Secretary. (see page 2 "The undersigned forwarded the response to the Secretary's Bureau on May 10, 2016, so that it would be filed with the Commission." One might speculate that it should have been done on May 6, rather than May 10, when the document was actually received at 801 Market Street in Philadelphia, PA. As shown in the Affidavit attached (Exhibit #5), it is believed that the only reason that the ALJ forwarded the May 5, 2016 document to the Secretary, and the ORDER (Order #6) was generated on May 10, 2016 which violates the Secretary's April 21, 2016 ORDER, in requiring a telephonic hearing (Option #3, which was not the criteria that the Complainant's chose in their May 5 submission) and/or once again giving the choice of coming in for an in person hearing was based on the fact that ALJ Jones went onto the Internet, and discovered on MAY 10, 2016 that Complainant, Mindy J. Zied (Campbell) posted the April 21, 2016 Decision of the PUC, so that the ALJ could alter and change said opinion reverting back to her prior ORDERS which is not in compliance with the "actual" ruling which was made on April 21, 2016 by the Commission, which is a strong reason for recusal, and shows bias against the Complainants, specifically Mindy Jaye Zied. The May 10, 2016 evidence is attached to the Affidavit, and that decision was posted only "after" it was certain that "all" parties had received the May 5, 2016 submission/response by the Complainants.

recuse herself from this particular case. (see *United States v. Thomas*³, 299 F.Supp.494, 499 (E.D. Missouri 1968).

THE MOTION IS TIMELY SUBMITTED

8. In compliance with 52 Pa Code §5.61, this Motion is submitted within the 20 day period of time provided by the Commission's procedural rules and regulations. The failure of the Complainants to request that the hearing examiner disqualify herself on the grounds of bias constitutes a waiver of the issue. (see *Savka v. Department of Education*, 403 A.2d 142 (Pa. Comwlth. 1979), which is why this Motion is submitted.

THE LAW WHICH SUPPORTS THE RECUSAL MOTION

9. "Personal bias", has been defined as attitudes, opinions, or comments which are based on purely personal feelings towards the parties in a case." *Johnson v. Trueblood*, 629 F.2d287, 291 (3d Cir. 1980). It is a personal feeling about a party that causes the decision maker to favor or disfavor that party. To be disqualifying, personal bias must result in an opinion on the merits of a case not supported by the record. (see *United States v. Grinnell Corp.*, 384 U.S. 563, 583, 86 S.Ct. 1698, 1710 (1966))

10. Parties to a proceeding are entitled to a fair hearing without bias, hostility or prejudgment. *Pennsylvania Publications v. Public Utilities Commission*, 152 Pa. Superior Ct. 279, 32 A.2d 40, reversed on other grounds 349 Pa. 184, 36 A.2d 777, 153 ALR 457 (1943)

11. To render a hearing unfair, the defect of the practice complained of must be such as

³ In *United States v. Thomas*, the following was stated:

"It is perfectly obvious that the existence of a completely fair and impartial tribunal is the most basic requirement of due process. Without that, our judicial system would be a farce. *498 As stated, "[D]emocracy must, indeed, fail unless our courts try cases fairly, and there can be no fair trial before a judge lacking in impartiality and disinterestedness." In *re J. P. Linahan*, 138 F.2d 650, 651 (2nd Cir. 1943). See, e.g. In *re Murchison*, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955)"

might lead to a denial of justice, or there must be an absence of one of the elements deemed essential to due process of law. 2 Am.Jr.2d., Administrative Law §410. Unfairness is evident if the tribunal's partiality and hostility goes too far toward the extreme of its authority, which as an example and shown in *Davoub v. Commonwealth of Pennsylvania State Dental Council & Examining Board*, 70 Pa. Commonwealth Ct. 621, 453 A. 2d 751 (1982)⁴ displayed heated, argumentative questioning of a party more characteristic of a prosecutor than of a neutral, detached and impartial decision maker.

52 Pa Code §5.482

12. A Motion for Recusal is, in fact, the equivalent of a Motion for Disqualification of a Presiding Officer under the Commission's rules and regulations. The applicable Commission regulation at 52 Pa. Code §5.482 states:

13. §5.482. Disqualification of a presiding officer.

⁴ Cited in the *Dayoub* case was the following:

"It is clear that a "fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955), and that due process applies to administrative agencies just as it does to courts. *Bruteyn Appeal*, 32 Pa. Commw. 541, 380 A.2d 497 (1977). It is equally clear that due process is denied where there is a commingling of the prosecutorial and adjudicatory functions before an administrative body. *Roche*, and that administrative tribunals must be unbiased and must avoid even the appearance of bias to be in accordance with principles of due process. *Donnon v. Downingtown Civil Service Commission*, 3 Pa. Commw. 366, 283 A.2d 92 (1971). In *Schlesinger Appeal*, 404 Pa. 584, 172 A.2d 835 (1961), the Supreme Court wrote:

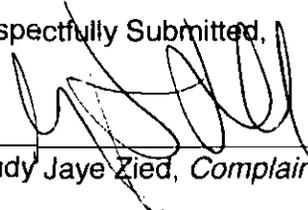
"Moreover, a predilection to favor one side over the other is not required in order to vitiate a judicial proceeding as being violative of due process. Merely, "a possible temptation to the average man as judge...not to hold balance nice, clear, and true" is sufficient. 404 pa. at 598, 172 A.2d at 841. See also *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145 (1968). As we stated in *Pennsylvania Human Relations Commission v. Thorp, Reed Armstrong*, 25 Pa. Commw. 295, 361 A.2d 497 (1976), the fact finding process, with which we are concerned here, must be afforded the broadest dimensions of constitutional protection."

- (a) A party may file a motion for disqualification of a presiding officer which shall be accompanied by affidavits alleging personal bias or other disqualification.
- (b) A presiding officer may withdraw from a proceeding when deemed disqualified in accordance with the law.
- (c) A motion for disqualification shall be served on the presiding officer and the parties to the proceeding.
- (d) The presiding officer will rule upon a motion for disqualification within 30 days of receipt. Failure to rule upon a motion for disqualification within 30 days of its receipt will be deemed to be a denial of the motion.
- (e) The ruling of the presiding officer on a motion for disqualification is subject to the interlocutory appeal procedure in §5.303 (relating to Commission action on petition for interlocutory review and answer)

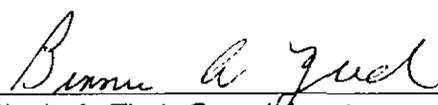
CONCLUSION

Clearly, the May 10, 2016 ORDER fails to comply with the Commission's April 21, 2016 ORDER, and it is equally as clear by the proceedings, the ORDER(S), and the instructions set forth by Administrative Law Judge, Angela T. Jones that the Complainant's rights, both Mindy Jaye Zied and Binnie A. Zied's due process rights which are substantial are being effected and a recusal is warranted based upon the specific facts which are set forth and relate to the record before this tribunal as stated in the affidavit signed by both Complainants, all of which are contained in Exhibit #5.

Respectfully Submitted,



Mindy Jaye Zied, Complainant



Binnie A. Zied, Complainant

Date: May 18, 2016 - (5) Exhibits attached

Exhibit #1 - May 10, 2016 ORDER by ALJ Angela T. Jones

- Exhibit #2** - April 21, 2016 ORDER by the Commission
- Exhibit #3** - USPS receipt that the Complainant's mailed the May 5, 2016 Response to the Commission's April 21, 2016 ORDER to both PECO attorney and the Secretary for the Commission
- Exhibit #4** - Proof of Service that the OALJ received the May 5, 2016 Complainant's document(s) on May 6, 2016
- Exhibit #5** - Affidavit with numbered paragraphs in left margin, as required by 52 Pa. Code §5.482

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MAY 18 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT #1

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mindy Jaye Zied and Binnie A. Zied	:	
	:	
v.	:	F-2015-2500342
	:	
PECO Energy Company	:	

**ORDER #6
SCHEDULE FOR TESTIMONY
AND TELEPHONIC HEARING**

On December 22, 2015, Complainants Mindy Zied and Binnie Zied filed a Petition for Interlocutory Review (Petition). The material question in the Petition asked whether the Pennsylvania Public Utility Commission (PUC or Commission) in compliance with the American with Disabilities Act of 1990, *et seq.*, should permit the merits of the formal complaint (Complaint) of the Complainants to be decided solely on paperwork submitted.

By Order dated December 28, 2015, the undersigned suspended the Complaint at Docket No. F-2015-2500342 pending the Commission's Order addressing the Petition. The Docket No. for the Petition is P-2015-2520474.

By Opinion and Order entered April 21, 2016, the Commission stated, Consistent with Section 5.412 of our Regulations, the Parties may submit written testimony and accompanying exhibits, including direct by the Complainants and rebuttal testimony by PECO, instead of presenting oral testimony during a hearing.

Zied v PECO Energy Co., Docket No. P-2015-2520474 (Opinion and Order entered April 21, 2016) (*Zied Order*) at 10. The Commission further directed the Complainants, "within twenty days of the entry date of this Opinion and Order, the Complainants provide in writing to the ALJ and

counsel for the Respondent their choice on how to present the Complaint from the six options that have been provided." *Id.* at 11.

In compliance with the *Zied Order* the Complainants supplied a written response dated May 5, 2016, where they elected to have all of the materials filed with the Complaint to suffice as their written testimony. The Complainants specifically referenced the August 24, 2015 Complaint, the September 15, 2015 and October 7, 2015 submissions containing 13 exhibits equating 267 pages as the paperwork submitted for written testimony. The undersigned notes that this May 5, 2016, response was not filed with the Commission's Secretary. The undersigned forwarded the response to the Secretary's Bureau on May 10, 2016, so that it would be filed with the Commission.

Section 5.412 of Title 52 of the Pennsylvania Code, 52 Pa.Code § 5.412, addresses written testimony in Commission proceedings. 52 Pa.Code § 5.412(e) specifically addresses form, which states,

(e) Form. Written testimony must normally be prepared in question and answer form, include a statement of the qualifications of the witness and be accompanied by exhibits to which it relates. A party offering prepared written testimony shall insert line numbers in the left-hand margin on each page. A party should also use a logical and sequential numbering system to identify the written testimony of individual witnesses.

The paperwork referred to by the Complainants and previously filed at this docket is not in question and answer form. Section 1.2(a), (c) and (d) of Title 52 of the Pennsylvania Code, 52 Pa.Code § 1.2(a), (c) and (d) states,

(a) This subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.

(c) The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.

(d) These liberal construction provisions apply with particularity in proceedings involving pro se litigants.

It is noted that the Complainants in the instant proceeding are pro se litigants. Thus pursuant to 52 Pa.Code § 1.2, the presiding officer has determined that the form of the written testimony will be waived to secure a just, speedy and less expensive determination of this Complaint.

The Respondent, PECO Energy Company, is directed to have written rebuttal testimony submitted no later than close of business (4:30 p.m.) on June 13, 2016. It is noted that although what purports to be the direct testimony of the Complainants is filed with the Commission, none of the paperwork is admitted into the record for evidence as there are exhibits and testimony which need to be established as reliable and verifiable to become admissible record evidence. Therefore, there is a need for an evidentiary hearing.

It is noted that the Complainants have expressed reluctance in participating in any evidentiary proceeding; however, the Commission noted in the *Zied Order* at 10.

We note, however, that any written testimony and exhibits submitted by the Parties will still be subject to the procedural rules regarding admissibility and cross-examination of the sponsoring witness. 52 Pa.Code § 5.412(c).

In accordance with the *Zied Order* and the Commission regulations of written testimony subject to the rules of admissibility and cross examination, 52 Pa.Code § 5.412(c), a telephonic hearing will be scheduled the week of July 18, 2016, by separate hearing notice. If the Complainants would prefer an in person evidentiary hearing, the Complainants are to notify the undersigned in writing of their preference no later than May 24, 2016. The in person evidentiary hearing would convene on a selected time, day and date during the week of July 18, 2016, with notice provided by separate document.

THEREFORE,

IT IS ORDERED:

1. That a stay of the formal Complaint of *Mindy Jaye Zied and Binnie A. Zied v. PECO Energy Company* at Docket No. F-2015-2500342 is lifted.

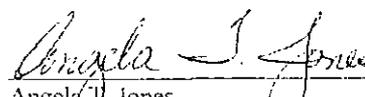
2. That the Complainants, Mindy Zied and Binnie Zied, have elected to proceed with the paperwork already submitted to suffice as their written direct testimony consistent with the discussion contained herein.

3. That the Respondent, PECO Energy Company, is directed to submit its written rebuttal testimony no later than 4:30 p.m. on June 13, 2016.

4. That a telephonic hearing will be scheduled the week of July 18, 2016, by separate hearing notice.

5. That if the Complainants prefer an in person hearing to take place at a time, day and date selected in the week of July 18, 2016, the Complainants are to notify the undersigned of their preference no later than May 24, 2016, consistent with the discussion contained herein.

Date: May 10, 2016


Angela J. Jones
Administrative Law Judge

Zied v. PECO
Docket No. F-2015-2500342

SERVICE LIST

MINDY JAYE ZIED AND BINNIE A ZIED
1948 KENTWOOD ST
PHILADELPHIA PA 19116

SHAWANE L LEE ESQUIRE
EXELON BUSINESS SERVICES Company LLC
LEGAL DEPARTMENT S23-1
2301 MARKET STREET
PHILADELPHIA PA 19103-1338

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MAY 18 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT #2

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held April 21, 2016

Commissioners Present:

Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
Pamela A. Witmer
John F. Coleman, Jr.
Robert F. Powelson

Mindy Jaye Zied and Binnie A. Zied

P-2015-2520474

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Interlocutory Review and Answer to Material Question (Petition), filed by Mindy Jaye Zied and Binnie A. Zied (Complainants) on December 22, 2015, in the above-captioned proceeding. PECO Energy Company (PECO, Respondent, or Company) did not file a brief or other response to the Petition.

In the Petition, the Complainants request interlocutory Commission review and answer to the following material question:

Whether in the Commonwealth of Pennsylvania in order to be in compliance with the Americans with Disabilities Act of 1990, [42 U.S.C. §§ 12101-12213, specifically] § 12132, an in-person hearing can be waived by a self-represented individual and/or individuals who are impaired by permanent non-physical disabilities, which include but are not limited to, communication difficulties, and/or by a ninety-seven year-old individual who suffers from health problems, allowing the merits of a complaint to be heard based solely on the paperwork submitted as an alternative form of communication/accommodation request to either the disabilities in question and/or the age and/or physical health of that elderly self-represented complainant.

The Complainants request that the Commission answer the material question in the affirmative. Petition at 2.

For the reasons more fully discussed below, we shall answer the material question in the affirmative, in part, and return this matter to the Office of Administrative Law Judge (OALJ) for such proceedings as may be necessary.

History of the Proceeding

On August 24, 2015, the Complainants filed a Formal Complaint¹ alleging that there were incorrect charges on Mindy Zied's bills from PECO for electric service. This Complaint was given the Docket No. F-2015-2500342. The Complainants claimed the amount owed was the result of an improper transfer of a balance accrued at 1948 Kentwood Street, Philadelphia, Pennsylvania (service address) prior to Mindy Zied's alleged occupancy at the service address. The Complainants also alleged that there were no meters at the service address from March 23, 2014, through June 13, 2014, to generate accurate billing of the amount of electric usage at the service address. The Complainants disputed the amounts billed over that time period. Complaint at 2. The Complainants

¹ The Complaint was a timely appeal of an informal Bureau of Consumer Services (BCS) decision at BCS Case No. 003322542.

stated that they reached a settlement with a PECO customer service representative regarding the unmetered electric usage bill from March 23, 2014, until June 13, 2014, which resulted in a balance due of \$133.94, and that PECO failed to honor that settlement. *Id.* at 5. The Complainants further contested a deposit assessed to Mindy Zied's account on the basis that PECO previously told Mindy Zied that no deposit was required for her account. *Id.* at 2.

On September 10, 2015, the Respondent filed an Answer denying all material allegations of fact and conclusions of law in the Complaint. The Respondent stated that the Complainant Mindy Zied was responsible for the transferred balance attributable to the Complainant Binnie Zied's account based on the Respondent's contention that Mindy Zied resided at the service address and benefitted from the electric service. Answer at 5-6. The Respondent also averred that the charges were correct and that the security deposit assessed to Mindy Zied's account was in compliance with its tariff and Section 1404(a) of the Public Utility Code (Code), 66 Pa. C.S. § 1404(a). Answer at 4.

On September 15, 2015, the Complainants filed an objection to the Respondent's Answer and also moved for an immediate judgment in their favor. By Order dated November 2, 2015, Administrative Law Judge (ALJ) Angela T. Jones indicated that the document the Complainants filed would be considered a preliminary objection. In the Order, the ALJ overruled the objection and denied the Complainants' request because the Motion failed to conform to the seven grounds available for filing objections set forth in 52 Pa. Code § 5.101(a)(1)-(7).

On October 7, 2015, the Complainants served the ALJ with a "Motion for an Immediate Decision/Summary Judgment" and "Brief in Lieu of Hearing," which the

ALJ treated as a Motion for Summary Judgment (Motion).² Among other things, the Complainants requested that reasonable accommodations be made and that the ALJ decide the proceeding based on written submittals or a written brief instead of an in-person or telephonic hearing. The Complainants stated that Mindy Zied is “permanently disabled with a non-physical disability” and indicated that her mental health condition does not allow her to effectively participate in a telephonic hearing. Motion at 4. The Complainants also stated that Binnie Zied’s “health would be in jeopardy” if she had to attend a hearing and noted her age of ninety-seven as a factor that prohibits her physical attendance at a hearing. *Id.* at 3. The Motion contained thirteen attachments.

By Secretarial Letter issued October 9, 2015, the Commission’s Secretary indicated that the cover page of the Complainants’ Motion was sent to the Office of Governor Tom Wolf. The Secretarial Letter stated that, since this matter is still pending before the Commission and due to the statutory prohibition on *ex parte* communications, the Secretary served a copy of the Complainants’ correspondence to Governor Wolf’s office on the ALJ and PECO in order to cure any *ex parte* communication.

On November 2, 2015, PECO filed a Motion to File Response to Complainants’ Motion for Summary Judgment *Nunc Pro Tunc*. The Respondent acknowledged that its response was not timely due to an administrative oversight. The Respondent also noted that the Complainants’ Motion was procedurally defective because it did not contain a Notice to Plead.

PECO also filed a Response to the Complainants’ Motion on November 2, 2015. In its Response, PECO disputed any settlement between the Parties and denied that the Company removed the meter at the service address without notice. PECO averred

² The ALJ noted that the Motion was not filed with the Commission. Accordingly, the ALJ filed the Motion with the Secretary’s Bureau on November 10, 2015, and provided a copy of the Motion to PECO’s counsel.

that there were several genuine issues of material fact pending in this case which would make summary judgment inappropriate. The Respondent contended that an in-person hearing was required to assess the credibility of witnesses and the amount of witnesses and documents potentially required to effectively advocate the matter.

In the Order Denying Motion for Summary Judgment dated November 17, 2015 (*November 2015 Order*), the ALJ initially found that it was reasonable to consider PECO's Response, because the ALJ had not yet ruled on the Motion prior to PECO filing its Response, *nunc pro tunc*, and the Complainants' Motion failed to contain the required Notice to Plead. *November 2015 Order* at 5. In ruling on the Motion, the ALJ concluded that the documents presented by the Complainants did not excuse their attendance because, as listed Complainants in this case, they are responsible for the allegations made in the Complaint and bear the burden of proof concerning the allegations. The ALJ stated that the Complainants' filings contain material questions of fact, including whether PECO's actions toward the Complainants constituted fraudulent conduct; whether the removal and replacement of the meter at the service address complied with the Commission's Rules and Regulations; whether PECO and the Complainants reached a settlement; and whether the Complainants' bills for electric service were correct. *Id.* at 7. The ALJ provided the Complainants with the following five options for proceeding with the Complaint:

- (1) by agreeing to mediation;
- (2) by agreeing to settlement negotiations;
- (3) through a telephonic evidentiary hearing;
- (4) through an in-person hearing; or
- (5) by withdrawing the Complaint and proceeding in the appropriate federal or municipal court.

Id. at 7-8. The ALJ determined that, because material issues of fact were present, summary judgment was not appropriate. Accordingly, the ALJ directed the

Complainants to inform the ALJ and the Respondent regarding their choice for presenting the Complaint based on the five options provided above. *Id.* at 8.

On December 22, 2015, the Complainants filed the instant Petition. The Petition requested a stay of the hearing that was scheduled for January 28, 2016.

By Order dated December 28, 2015, ALJ Jones directed that the proceeding at Docket No. F-2015-2500342 be stayed until the Commission rules on the instant Petition.

By Secretarial Letter issued December 28, 2015, the Commission waived the thirty-day period for consideration set forth in 52 Pa. Code § 5.303 in order to provide adequate time for a thorough review of the question raised. *See* 52 Pa. Code § 1.2(c); *see also, C.S. Warthman Funeral Home, et al. v. GTE North, Incorporated*, Docket No. C-00924416 (Order entered June 4, 1993).

Discussion

Legal Standards

As a preliminary matter, we note that any issue we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Complainants filed their Petition pursuant to Section 5.302 of the Commission's Regulations, 52 Pa. Code § 5.302. During the course of a proceeding and pursuant to the provisions of 52 Pa. Code § 5.302, a party may seek interlocutory review

and answer to a material question which has arisen or is likely to arise. The standards for interlocutory review are well established. Section 5.302 of our Regulations requires that the petitioning party "state . . . the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding." The pertinent consideration is whether interlocutory review is necessary in order to prevent substantial prejudice – that is, the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process. *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A-310200F0002, *et al.* (Order entered June 10, 1999); *Pa. PUC v. Frontier Communications of Pa. Inc.*, Docket No. R-00984411 (Order entered February 11, 1999); *In re: Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985).

Pursuant to 52 Pa. Code § 5.303, the Commission may take one of the following courses of action on requests for interlocutory review and answer to a material question:

- (1) Continue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the parties.
- (2) Determine that the petition was improper and return the matter to the presiding officer.
- (3) Decline to answer the question.
- (4) Answer the question.

Generally, Petitions for Interlocutory Review are not favored, as the preferred approach is to permit proceedings to move forward in the normal course in order to provide all parties, the presiding officer, and the Commission with a full opportunity to develop the record, brief issues, and present arguments at each stage. *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Order entered October 23, 2009), at 3.

The Complainants' Petition

The Complainants' Petition concerns ALJ Jones' rulings in the *November 2015 Order*. The material question raised in the Petition is as follows:

Whether in the Commonwealth of Pennsylvania in order to be in compliance with the Americans with Disabilities Act of 1990, [42 U.S.C. §§ 12101-12213, specifically] § 12132, an in-person hearing can be waived by a self-represented individual and/or individuals who are impaired by permanent non-physical disabilities, which include but are not limited to, communication difficulties, and/or by a ninety-seven year-old individual who suffers from health problems, allowing the merits of a complaint to be heard based solely on the paperwork submitted as an alternative form of communication/accommodation request to either the disabilities in question and/or the age and/or physical health of that elderly self-represented complainant.

The Complainants request that the Commission answer the material question in the affirmative. Petition at 2. The Complainants have attached the thirteen documents that were attached to their October 7, 2015 Motion.

In support of their Petition, the Complainants aver that Pennsylvania and federal law set forth requirements regarding the provision of reasonable accommodation requests for individuals with disabilities. The Complainants cite to 201 Pa. Code Ch. 2, which governs reasonable accommodations under the Americans with Disabilities Act of 1990 (ADA), and to the ADA, specifically 42 U.S.C. § 12132.³ Petition at 8-9. The Complainants state that Mindy Zied is considered a person who is in a protected class

³ Section 12132 provides the following: "Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

based on her permanent psychological disabilities, which include bipolar disorder, paranoid disorder, and communication impairments. They also state that Binnie Zied is ninety-seven, suffers from health issues, and is a cancer survivor. Petition at 3, 4. The Complainants argue that the ALJ did not provide direction or instruction concerning the further ability for Mindy Zied to obtain the accommodation she was requesting based on her communicative disabilities or provide any information about appeal procedures. The Complainants claim that the ALJ did not allow for a reasonable accommodation for both Complainants that would enable them to effectively participate in the hearing process in this case. Petition at 14-15.

Disposition

Based upon our review of the Petition and the applicable law, we find that the Complainants' Petition supports the necessity for interlocutory review in order to prevent substantial prejudice or to expedite the conduct of the proceeding. The manner in which the Complainants are permitted to present their case will impact the due process rights of all Parties and their abilities to effectively participate in this proceeding. Because the Complainants' accommodation request affects the presentation of the Complainants' entire case and any testimony and exhibits that the Complainants wish to submit for the record, any potential error or prejudice that may flow from the *November 2015 Order* should be addressed at this time. We find that doing so will expedite the conduct of this proceeding and provide guidance to the Parties concerning the manner in which they will be expected to present their cases, while also ensuring the development of a factual record upon which the ALJ can issue a decision.

The material question presented by the Complainants requests a waiver of an in-person hearing and the ability to present the merits of the Complaint case based

solely on paperwork which they submit.⁴ In the *November 2015 Order*, the ALJ provided the Complainants with the following options for proceeding with their Complaint:

- (1) by agreeing to mediation;
- (2) by agreeing to settlement negotiations;
- (3) through a telephonic evidentiary hearing;
- (4) through an in-person hearing; or
- (5) by withdrawing the Complaint and proceeding in the appropriate federal or municipal court.

While we agree with the ALJ that the Complainants may proceed with any of these five options, we conclude that we can provide the Complainants with an additional accommodation option that is consistent with our procedural Regulations.

Consistent with Section 5.412 of our Regulations, the Parties may submit written testimony and accompanying exhibits, including direct testimony by the Complainants and rebuttal testimony by PECO, instead of presenting oral testimony during a hearing. We note, however, that any written testimony and exhibits submitted by the Parties will still be subject to the procedural rules regarding admissibility and cross-examination of the sponsoring witness. 52 Pa. Code § 5.412(c). The ALJ has the authority to establish the schedule and directives for the filing and authentication of written testimony and exhibits and for cross-examination by other Parties. To the extent that the Parties reach settlements and/or stipulate to facts or to the authenticity of documents, 52 Pa. Code §§ 5.232, 5.234, or admit to facts, 52 Pa. Code § 5.350, this may reduce the necessity for oral presentation during an in-person or telephonic hearing.

We find that this approach is in the public interest, as it provides a reasonable accommodation for the Complainants while protecting the due process rights

⁴ To the extent that the Complainants are seeking a determination of a violation or appeal rights under the ADA, the Commission does not have jurisdiction over such actions. As the ALJ indicated, ADA claims should be brought before the appropriate federal or municipal court.

of all of the Parties. Because there are material issues of fact present, we cannot waive the Parties' rights to cross-examination or prohibit the Parties from responding to arguments made by each other. *See, Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (stating that the Commission is bound by the due process provisions of constitutional law which include "notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal"). Based on our determination, we direct that, within twenty days of the entry date of this Opinion and Order, the Complainants provide in writing to the ALJ and counsel for the Respondent their choice on how to present the Complaint from the six options that have been provided.

Conclusion

For the reasons set forth above, we shall answer the material question presented by the Complainants in the affirmative, in part, and return this matter to the Office of Administrative Law Judge, consistent with the discussion in this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Interlocutory Review and Answer to Material Question, filed by Mindy Jaye Zied and Binnie A. Zied on December 22, 2015, is granted.
2. That the following question is answered in the affirmative, in part, consistent with this Opinion and Order:

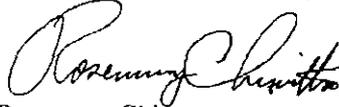
Whether in the Commonwealth of Pennsylvania in order to be in compliance with the Americans with Disabilities Act of 1990, [42 U.S.C. §§ 12101-12213, specifically] § 12132, an

in-person hearing can be waived by a self-represented individual and/or individuals who are impaired by permanent non-physical disabilities, which include but are not limited to, communication difficulties, and/or by a ninety-seven year-old individual who suffers from health problems, allowing the merits of a complaint to be heard based solely on the paperwork submitted as an alternative form of communication/accommodation request to either the disabilities in question and/or the age and/or physical health of that elderly self-represented complainant.

3. That this matter is returned to the Office of Administrative Law Judge for such proceedings as may be necessary, consistent with this Opinion and Order.

4. That, within twenty days of the entry date of this Opinion and Order, Mindy Jaye Zied and Binnie A. Zied shall provide in writing to the Administrative Law Judge and counsel for PECO Energy Company their choice for presenting the Complaint, consistent with the options discussed in this Opinion and Order.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 21, 2016

ORDER ENTERED: April 21, 2016

RECEIVED

MAY 18 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT #3

9925 BUSTLETON AVENUE
PHILADELPHIA, PA 19115-9998

05/05/2016 02:15:10 PM

Sales Receipt			
Product	Sale	Unit	Final
Description	Qty	Price	Price

PHILADELPHIA, PA 19101			\$1.57
Zone-1			
First-Class Mail® Large Envelope			
0 lb. 4.00 oz.			
* Expected Delivery Day Saturday, May 7.			

Issue Postage: *LCC* \$1.78

HARRISBURG, PA 17120

Zone-2

First-Class Mail® Large Envelope

0 lb. 3.80 oz.

* Expected Delivery Day Saturday, May 7.

Issue Postage: *PUC* \$1.57

HARRISBURG, PA 17120

Zone-2

First-Class Mail® Large Envelope

0 lb. 3.80 oz.

* Expected Delivery Day Saturday, May 7.

Issue Postage: \$1.57

Total: \$4.92

Paid by: *(Signature)*

VISA \$4.92

Account #: XXXXXXXXXXXX1250

Approval #: 005570

Transaction #: 828

23-902370154-99

SSK Transaction #: 30

USPS® #: 418557-9551

Thanks.

It's a pleasure to serve you.

ALL SALES FINAL ON STAMPS AND POSTAGE.

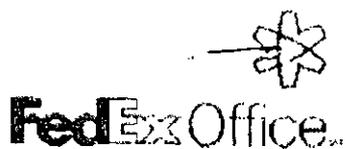
REFUNDS FOR GUARANTEED SERVICES ONLY.

RECEIVED

MAY 18 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT #4



7180
1548 KENNEDY ST
PHILADELPHIA, PA 19102-3942
1111111111

Recipient Address:

PA Public Utility Commission
Office of the Admin Law Judge
801 Market Street
4th floor suite 4063
Philadelphia, PA 19107
1111111111

Shipping option:
STANDARD RATE

Package Information:
YOUR PACKAGING
12 x 9 x 3

Payment Type:
CREDIT_CARD

Total Declared Value:

FedEx Ground 0.5 lbs. (S) 7.90

By retaining and utilizing the financial liability information you agree to the FedEx terms of shipping in the applicable FedEx Service Guide available on FedEx.com and that this shipment does not contain dangerous goods, hazardous materials or other prohibited items.

Visit us at: fedex.com
Or call 1.800.GoFedEx
1.800.463.3333

May 9, 2016 3:05:26 PM

782999171119 0.6 lbs. (S) \$7.90
 Declared Value
 Shipment subtotal: \$7.90
 Total Due: \$7.90
 Cash: \$20.50
 Change Due: \$12.60

H = Weight entered manually
 S = Weight read from scale
 T = taxable item

Terms and conditions apply. See
fedex.com/us/service-guide for details.

Visit us at: fedex.com
 Or call 1.800.GoFedEx
 1.800.463.3339

May 5, 2016 3:38:44 PM

***** WE LISTEN *****
 Tell us how we're doing
 & receive a discount on your next order!
fedex.com/weListen or 800-398-0342
 Redemption Code:

*** Thank you ***

782999171119

[Save tracking results](#)

[Print](#) [Help](#)

Ship date:
Thu 5/05/2016

Actual delivery:
Fri 5/06/2016 1:40 pm

PHILADELPHIA, PA US

Delivered
Signed for by: Signature on File

Philadelphia, PA US

[Hold at FedEx Location](#)

[Request Notifications](#)

[Obtain Proof of Delivery](#)

More actions

Travel History

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Date/Time	Activity	Location
5/06/2016 - Friday		
1:40 pm	Delivered Signature on file	Philadelphia, PA
6:25 am	On FedEx vehicle for delivery	PHILADELPHIA, PA
6:16 am	At local FedEx facility	PHILADELPHIA, PA
3:41 am	Departed FedEx location	MIDDLETOWN, PA
1:22 am	Arrived at FedEx location	MIDDLETOWN, PA
5/05/2016 - Thursday		
Select time zone (Local Scan Time)		

Shipment Facts

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RECEIVED

MAY 18 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT #5

AFFIDAVIT
OF MINDY JAYE ZIED AND BINNIE A. ZIED
Pursuant to 52 Pa Code §5.482

Mindy Jaye Zied, and) F-2015-2500342
Binnie A. Zied, <i>Complainants</i>) (P-2015-2520474 - April 21, 2016)
v.)
PECO Energy Company,)
(an Exelon Corp.), <i>Respondents</i>)
_____)

1. This is an Affidavit, written and signed on May 18, 2016 to be used as to the reasoning of why the recusal of Administrative Law Judge Angela T. Jones for the Public Utilities Commission, located at 801 Market Street, Philadelphia, PA is necessary in order for the Complainants, Mindy Jaye Zied and Binnie A. Zied their due process rights in receiving a fair review of their Complaint against the Respondents, PECO Energy Corp./Company (an Exelon Corporation).

2. It was bad enough that we, as Complainants had to go through yet one additional process (Interlocutory Appeal) just because you, as an Administrative Law Judge had regulations already set forth by the Public Utilities Commission that were in place, which you could have used in affording us a reasonable accommodation request that we needed to go forward with the issues here, which created an additional strain on the disabilities we have, but you just chose not to do so.

3. The April 21, 2016 PUC ORDER requested us to choose the criteria which we had wished to proceed with. We, as the Complainants, Mindy J. Zied and Binnie A. Zied chose the 6th criteria that the PUC 4/21/2016 ORDER allowed as an "option" aside from the (5) other

criteria you set forth in a prior order, which was to place everything in writing which was asserted in the paperwork dated and mailed out on May 5, 2016, which according to Fed Ex (see here at Exhibit #4) your office received at 11:40 p.m. on May 6, 2016.

4. On May 10, 2016, you - Administrative Law Judge Angela T. Jones issued an ORDER, which in our view is just "more of the same", when you glossed over the fact that we chose criteria Number (6), and in that ORDER gave us an ultimatum of choosing Choice Number #3 (a telephonic hearing), or Choice Number #4 (an in person hearing). Then in the May 10, 2016 ORDER, you directed us to make a decision between criteria Number #3 or Criteria Number #4, and to do so no later than May 24, 2016, which clearly re-routes the decision from "our choice" to "your choice", abusing the discretion of your office, and violating the language in the PUC ORDER issued and effective on April 21, 2016.

5. In all of the ORDERS which you have rendered, you have continually used the word "alleged" when identifying Mindy J. Zied's disability(s), and disrespectfully extracted what you wanted to when identifying a 97 yr. old individual's health condition, when you had concrete evidence and pleadings to the contrary, one of which showed that Ms. Zied's disability was an "established" condition, and there was evidence attached showing that:

(11/17/2015 Order, pg. 4, last paragraph): "Complainant's requested that reasonable accommodations be made and that anything further placed in writing, but the basis for accommodation is unclear. It is assumed that Complainants requested the accommodations based on alleged non-physical disability of Mindy Zied and alleged narcissism of Binnie Zied which may jeopardize her health".

6. For the reasons set forth in this Motion, including our left numbered margined paragraphs in Exhibit #5, which is the Affidavit required by 52 Pa Code §5.482, along with the other Exhibits included here, and based on our Constitutional right in being able to obtain a fair adjudication as to the issues we have presented, we choose for you, Angela T. Jones to recuse yourself from this case - Zied, et.al. v. P.E.C.Q. - Case #F-2015-250034

7. **When Orders by Administrative Law Judge's are inaccurate when it pertains (as it does here) to the Complainants, and the inaccuracies do not rely on the "factual record", recusal is warranted.**

8. **PRE-HEARING ORDER- September 30, 2015**

ALJ Jones:

¶3. YOU MAY LOSE THIS CASE IF YOU DO NOT TAKE PART IN THE HEARING AND PRESENT EVIDENCE ON THE ISSUES RAISED. (EMPHASIS NOT ADDED)

¶13. The Complainants Mindy Jaye Zied and Binnie A. Zied have provided attachments to the formal complaint. The Complainants are cautioned that exhibits for the Initial Hearing must be produced at the hearing. The attachments to the formal complaint at [sic] not in the record and must be produced at the hearing.

9. **ALJ JONES ORDER OF NOVEMBER 17, 2015**

In the ALJ November 17, 2015 ORDER, pertaining to the Complainants Accommodation request(s), the following is asserted on page #4:

10. "Complainant's requested that reasonable accommodation be made and that anything further be put in writing, but the basis of the accommodations is unclear. It is assumed that Complainants requested the accommodations based on alleged non-physical disability of Mindy Zied and alleged narcissism (the Complaint referred to this allegation as "Narcissism," Motion III at 3, fact #8) of Binnie Zied which may jeopardize her health.
11. Complainant's also requested that appeal rights be sent if the accommodation request is denied..."
12. **(Page 6 of the 11/17/2015 Order by ALJ Jones):**
- "It is noted that the Complainants contend that Binnie A. Zied would not be able to attend a Hearing due to her medical condition and intimates that her 97 years is also a factor that prohibits her physical attendance. Complainant states that the City of Philadelphia does not require persons over the age of 70 years of age to participate as jurors, but allows such person to choose not to participate..."
13. ...The Complainant, Binnie A. Zied, is listed as a Complainant in this proceeding. She came to this agency to have her dispute heard. If she was not a Complainant, then her

attendance would only be required as perhaps a witness at the discretion of the remaining complainant, Mindy Jaye Zied. The documents presented thus far do not excuse Binnie A. Zied's attendance as she is responsible for the allegations made in the Complaint...

14. ...Complainants sought out this agency...An in-person hearing is far superior to a telephonic hearing⁵ in making an accurate assessment of credibility because verbal conduct and non-verbal actions or non-verbal omissions are assessed...
15. In fact #9 of Motion II of the Complainant, Mindy Jaye Zied, provides her disability as rationale not to attend in-person hearings and past experience before another agency that determined her mental health condition as prohibitive to participate in a hearing by telephone. See Motion II at 4. Similar to what was stated concerning Binnie A. Zied, Mindy Jaye Zied signed the Complaint and is responsible for the allegations it contains and sustaining the burden to prove the allegations.

**16. October 7, 2015 Submission - Exhibit FF
Binnie Zied's Physician's Medical Letter dated August 21, 2015**

..."I am the physician of Binnie Zied. it has recently been brought to my attention that PECO has sent a 10 day shut off notice to be processed on August 31, 2015."...

**17. October 7, 2015 Submission - Exhibit #10 - June 2, 1999
Mindy Jaye Zied's Psychiatrist Medical Letter**

...Ms. Zied has two disorders, one which is Schizoaffective Disorder, Bipolar Type, and the other Paranoid Disorder. With regards to the Bipolar Disorder, Ms. Zied-Campbell experiences severe mood swings ranging from mania to severe depressive episodes..Often times people who are clinically depressed experience....inability to focus/concentrate and are unable to initiate and/or complete simple tasks."..

**18. The Record Evidence (October 7, 2015 Submission - Exhibit #6)
Philadelphia Court of Common Pleas Decision- May 30, 1974
Mindy Jaye Zied - Court disposition**

FINDING

X That in consideration of the testimony presented, your MASTER finds that Mindy

⁵ There was nothing in the record where either Complainant requests and/or agreed to a telephonic hearing, in lieu of an in person hearing.

Zied, above named Respondent is thus mentally disabled within the meaning of this act.⁶

19. **The Record Evidence (October 7, 2015 Submission) - Exhibit #11
November 28, 2014 SSA ALJ Decision**

"..The record evidence supports a fully favorable decision....The claimant was previously awarded Supplemental Security Income benefits.. since 1999....On December 17, 2013...it was requested that she phone into the office at a specified date and time....The claimant phone in....and was unhappy with the result of the conversation. She then requested that all communication be in writing....She requested no further communication over the telephone. She provided information in writing to the field office regarding her finances. Nevertheless, it was determined that she was not cooperating with the field office and her benefits were terminated as a result....

20. **November 28, 2014 - SSA ALJ DECISION**

The undersigned finds that the claimant made a reasonable request to have business conducted in writing.... The undersigned instructs the field office to conduct all further business with the claimant in writing and to conduct the review of claimant's eligibility for benefits on their written communications with the claimant.

21. **May 10, 2016 - ALJ JONES' ORDER #6**

(Page 2, paragraph 2)

"The Complainant's specifically referenced the August 24, 2015 Complaint, the September 15, 2015 and October 7, 2015 submission containing 13 exhibits equalling 267 pages as the paperwork submitted for written testimony."

22. **The Actual sentence which was cited by Binnie and Mindy Zied, on pgs. 3 and 4 of the May 5, 2016 submission was as follows:**

Based upon the belief that the **August 24, 2015 Formal Complaint; the September, October,** (October 7, 2015 containing 13 Exhibits equalling 267 pages) **& November** submissions (letters and motions) by both Mindy and Binnie Zied support their side of the argument, and support the allegations against PECO, the Complainants' **choose to proceed on the paperwork, letters, affidavits, emails,** and additional evidence already submitted to this tribunal **on the 6th criteria offered by the PUC,**

⁶ Referring to Section 405 of the Mental Health and Mental Retardation Act of 1966.

(written testimony and evidence submitted) based upon the health and disabilities of both Complainants.

23. **Complainant's November 15, 2015 "Letter" to the Secretary, PECO Attorney, and ALJ Jones, which ALJ Jones fails to mention (anything about the November submissions) in her May 10, 2016 "ORDER" said this, in part:**

"Based upon the fact that I was told by PECO employee, Bill Adams, along with PECO Attorney, Shawane Lee that if I did not file a formal complaint with the PUC, that my electric would be cut off on August 31, 2015 (although PECO clearly knew that the PUC gave me until September 4, 2015 to file said paperwork), I am not appreciative of the fact that I have been forced to file a formal complaint in order to resolve this matter, because of PECO's continuous bad behavior in ignoring this from March, 2014, directed at a customer that they have clearly been put on notice that has a psychological disability, along with another customer who they were told time and time again was of the age of 96.

24. *With this being said, any rules, regulations, or whatever is required of me, would have needed to be specifically explained to me at each and every step of this process, for if it is not, and clearly it is apparent I am suffering rulings against me based upon my disability and this tribunal's belief that I am obligated to know the entire process of a formal complaint when I have been forced to file this or have the electric shut off at my residence, it is a violation of the American with Disabilities Act in forcing someone who has a disability such as mine to accomplish things which in a short amount of time cannot be done."*

25. The first paragraph was set forth, because at one point in time, in an ORDER issued by ALJ Jones, she asserted that because "we" voluntarily filed a Complaint with the Commission, it was "our" responsibility to show up at the hearing, (implying regardless of our disabilities and age). However, that was just not the case.

26. By ALJ Jones leaving out the language as what the Complainants' applied in their May 5, 2016 submission referencing "**November**", and the fact that these two paragraphs are not only adverse towards PECO's behavior and clearly indicate the "disability" of Mindy Jaye Zied, ALJ Jones has shown favoritism toward PECO and bias toward Mindy Jaye Zied.

27. ALJ Jones totally ignored Exhibit EE, which was contained in the August 24, 2015 FORMAL COMPLAINT, which was an email from the PECO Attorney which said in part: (see

pg. 216, October 7, 2015 submission from Complainants)

*"...On **August 17, 2015**, PECO sent you a ten-day termination notice. Please note, if the PUC does not docket and serve the formal complaint on PECO prior to the expiration of the ten day period, your service will be terminated."..*

28. Whereas on **August 14, 2015** (page 34) in the October 7, 2015 submission, the letter from the PUC, which was clearly sent to PECO, as indicated said this:

"We have received your request to appeal the decision of the Bureau of Consumer Services. We have enclosed one complaint form you to complete....

29. ..Return this form to us on or before September 4, 2015 to the address listed below:

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

30. ...We will send a copy of this letter to the company so they know you are appealing."..

31. **ALJ Jones could have easily avoided an Interlocutory Appeal, and alleviated the stress of having the Complainants file one, had she complied with the regulations, and made an accommodation request on her own**

32. In re-reading the April 21, 2016 Ruling/ORDER by the Commission which was the result of an Interlocutory Appeal request by the Complainant's, it appears that ALJ Jones had the capacity (knowing the regulations already set forth by the Public Utilities Commission), as she has been an employee/Administrative Law Judge for this Administration for over 11 years, as the Internet/Linkedin indicates, that she could have easily accommodated the disability(s) and age of the Complainant's, but chose not to based on her bias against them.

33. The Commission stated this on page #10 of the April 21, 2016 ORDER/RULING:

.. "While we agree with the ALJ that the Complainants may proceed with any of these five options⁷, we conclude that we can provide the Complainants with an additional accommodation option **that is consistent with our procedural Regulations.** Consistent with Section 5.412 of our Regulations, the Parties may submit written testimony and accompanying exhibits, including direct testimony by the Complainants and rebuttal testimony by PECO, instead of presenting oral testimony...during a hearing."

34. **Mindy Jaye Zied and Binnie A. Zied "DID NOT" choose Option #3 in their May 5, 2016 response to the April 21, 2016 Order - Making ORDER #6 (May 10, 2016) in violation of the language and ruling of the Commission's ORDER**

Option #3, as the ALJ's prior Order indicated was an "Option", and as the Commission re-iterated on page 10 of their April 21, 2016 ORDER, is as follows:

(3) through a telephonic evidentiary hearing

35. The Administrative Law Judge (Jones) admittedly in her own words indicated the choice that the Complainant's had indicated in their May 5, 2016 document:

(May 10, 2016 ORDER, pg. 2, second paragraph):

*"In compliance with the Zied Order the Complainant's supplied a written response dated May 5, 2016 where **they have elected** to have all of the materials filed with the Complaint **to suffice as their written testimony.**"*

36. The April 21, 2016 ORDER of the Commission indicated that there was a **sixth criteria** which the Complainant's could choose, when they stated this on page 10 of their April 21, 2016 decision:

*"Consistent with Section 5.412 of our Regulations, the **Parties** may submit written testimony and accompanying exhibits, **including direct testimony by the***

⁷ The Five options on page 10 of the April 21, 2016, which the Commission was referring to were as follows:

- (1) by agreeing to mediation;
- (2) by agreeing to settlement negotiations;
- (3) through a telephonic evidentiary hearing;
- (4) through an in-person hearing; or
- (5) by withdrawing the Complaint and proceeding in the appropriate federal or municipal court.

Complainants and rebuttal testimony by PECO, INSTEAD OF presenting ORAL testimony during a hearing. (emphasis added)

37. The aforementioned sentence used by the Commission in their 4/21/2016 ORDER is consistent to have "all" things place in writing, opposed to engaging in any ORAL communications as an alternative accommodation request based upon the disability(s) and age of the Complainants'.⁸

38. In further support of the April 21, 2016 ORDER, the Commission stated on page 4, paragraph (1):

"Among other things, the Complainants requested that reasonable accommodations be made and that the ALJ decide the proceeding based on written submittals or a written brief instead of an in-person or telephonic hearing.

39. ***The Complainants stated that Mindy Zied is "permanently disabled with a non- physical disability" and indicated that her mental health condition does not allow her to effectively participate in a telephonic hearing. Motion at 4.***⁹

In the 12/22/2015 Complainant's Petition for Interlocutory Review which further supports the aforementioned paragraph, was asserted as "footnote #3", in paragraph 7, on page (4) of the Petition which was initially asserted to ALJ Jones on Page 4 of the October 7, 2015

⁸ The question by Complainant's on Interlocutory Appeal/Review was as follows:

"Whether in the Commonwealth of Pennsylvania in order to be in compliance with the American with Disabilities Act of 1990, et. seq., (as amended) - 42 U.S.C. § 12132, an in-person hearing can be waived by a self-represented individual and/or individuals who are impaired by permanent non-physical disability(s), to include but are not limited to communication difficulties, and/or by a 97 year old individual/ who suffers from health problems, allowing the merits of a complaint to be heard based solely on the paperwork submitted, as an alternative form of communication/accommodation request to either the disability(s) in question and/or the age and/or physical health of that elderly self-represented complainant(s)."

⁹ ¶ 7. On October 7, 2015, Complainants, Mindy Jaye Zied, and Binnie Zied submitted a "Brief in lieu of a Hearing" to the ALJ and the PECO Attorney, totaling 269 pages which included 35 Exhibits to support the October 7, 2015 submission. The disability and age accommodation request(s) made by the Complainants were either never directly addressed in the context that they were written³, or denied outright by the Administrative Law Judge. (**Attachment #10** - ALJ Order dated November 17, 2015)

document by Complainants, which ALJ Jones chose to ignore/not address.

40. (12/22/2015, footnote #3):

Page 4 of the October 7, 2015 document:

Fact #9 - Mindy Zied is permanently disabled with a non-physical disability. The Honorable John W. Herron of the First Judicial District of Pennsylvania Court of Common Pleas, Philadelphia County on November 5, 2014 signed an ORDER which promulgates the "American with Disabilities Act (Title II Policy), which incorporates accommodation requests, as well as ADA coordinators for persons with disabilities. (see here at **Exhibit #8**) Mindy J. Zied, based solely on her disability normally does not attend hearings in person. Because of her disability, and communication problems, she also does not partake in telephone hearings. (see the partial decision in the Commonwealth Court of Pennsylvania (No. 2547 C.D. 2009 , filed on August 25, 2010 - M.J.Z.-C. v. Department of Public Welfare), authored by the Honorable Robert Simpson. (**Exhibit #9**), which in part stated:

41. "...In her Notice of Appeal, Petitioner asked BHA for the following accommodation:

42. "The hearing will be in 'writing' based upon the briefs submitted by [Petitioner] due to her disability of 'Bipolar Disorder,' 'Paranoid Disorder,' 'Hypergraphia,' and 'Sleep Apnea.'....

43. ..BHA assigned the matter to an ALJ, who scheduled a telephonic hearing and provided Petitioner with notice of the hearing. In response, Petitioner sent the ALJ a letter, reiterating her request to not participate in the hearing:

44. Due to both my husband and my mental impairments ...it is not easy for me to communicate over the telephone. I get overwhelmed and forget the points I am trying to make. The most effective way for me to present these issues is for [me] to do so in writing....Before the hearing, Petitioner submitted her ALJ Brief, which included 21 exhibits spanning approximately 118 pages...

45. At the outset of the hearing, the ALJ stated his intention to telephone Petitioner to participate. However, he acknowledged her accommodation request and granted it. He "agree[ed] to accept her brief and enter [it] into the record and decide the case accordingly."..

46. The Commission, in their discussion showed why the Complainants' were requesting a reasonable accommodation when they stated this on Page 8 of the 4/21/2016 ORDER:

"In support of their Petition, the Complainants aver that Pennsylvania and federal law set forth requirements regarding the provision of reasonable accommodation requests for individuals with disabilities. The Complainants cite to 201 Pa. Code Ch. 2, which

governs reasonable accommodations under the American with Disabilities Act of 1990 (ADA), and to the ADA, specifically 42 U.S.C. §12132. Petition at 8-9.¹⁰

47. *The Complainants state that Mindy Zied is considered a person who is in a protected class based on permanent psychological disabilities, which include bipolar disorder, paranoid disorder, and communication impairments. They also state that Binnie Zied is ninety-seven, suffers from health issues, and is a cancer survivor.*

¹⁰ 12/22/2015 - Complainants' Petition for Interlocutory Review

¶22. Chapter 2 -Pennsylvania Code - Reasonable Accommodation requests under Title II of the American with Disabilities Act

¶23. Rule 250. Policy.

It is the policy of the Unified Judicial System to prohibit discrimination against any individual with a disability, as defined by the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131 et seq., in accessing or participating in judicial proceedings or other services, programs, or activities of the Unified Judicial System.

Source - ¶24.The provisions of this Rule 250 adopted March 3, 2014. effective immediately, 44 Pa.B. 1419.

¶25. Rule 251. Scope.

These rules shall apply to each UJS entity which includes, but is not limited to, all appellate courts, judicial districts, boards, committees and agencies under the administrative authority of the Supreme Court....

¶26. Rule 252. Reasonable accommodations.

A. Each UJS entity shall develop a written policy to receive and process requests for reasonable accommodations from individuals with disabilities. The policy shall be posted on each UJS entity's respective website and in each facility.

B. All policies developed must be substantially similar to the policy appended to this Rule (Appendix A) and shall contain, at a minimum, the following elements:

1. Appointment of an ADA coordinator—the coordinator must be identified on all court or program materials and the following information shall be provided: the coordinator's name, work address, work fax number or e-mail address and work telephone number.
2. Notice of the right to request free accommodation(s)
3. Explanation of the process for requesting accommodation(s).
4. Time line for request and response.

C. Each UJS entity **shall** develop a form substantially similar to the one appended to this rule (Appendix A) for processing requests for reasonable accommodations.

D. Each UJS entity **shall** adopt and publish a grievance procedure, substantially similar to the procedure appended to this rule (Appendix B), **for requests that have been denied in whole or in part. Any denial of an accommodation request based upon undue burden or fundamental alteration to services and programs shall be put in writing by the head of the entity or his or her designee and shall provide specific reasons for the denial.**

¶27. Source

The provisions of this Appendix A adopted March 3, 2014, effective immediately, 44 Pa.B. 1419.

¶28 The Unified Judicial System of Pennsylvania (UJS) complies with Title II of the Americans with Disabilities Act (ADA) which provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity". 42 U.S.C.A. § 12132. Pursuant to that requirement, if you are an individual with a disability who needs an accommodation in order to participate in any judicial proceeding or any other service, program, or activity of the UJS, you are entitled, at no cost to you, to the provision of certain assistance. The ADA does not require the (UJS entity name here) to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

¶29. If you require an accommodation under the ADA, it is recommended that you make your request as soon as possible or at least three (3) business days before your scheduled participation in any court proceeding or UJS program or activity. All requests for accommodation, regardless of timeliness, will be given due consideration and if necessary, may require an interactive process between the requestor and the (name of UJS entity) to determine the best course of action

ANOTHER REASON FOR RECUSAL OF ALJ JONES

48. (4/21/2016 ORDER, page 9, paragraph one)

"The Complainants argue that the ALJ did not provide direction or instruction concerning further ability for Mindy Zied to obtain the accommodation she was requesting based on her communicative disabilities or provide any information about appeal procedures.

49. *The Complainants claim that the ALJ did not allow for a reasonable accommodation for both Complainants that would enable them to effectively participate in the hearing process in this case."*¹¹

50. **THE MAY 10, 2016 ORDER BY ALJ JONES SHOWS BIAS AGAINST INDIVIDUALS WITH INVISIBLE DISABILITIES THAT HAVE COMMUNICATION PROBLEMS AND A RECUSAL IS THE ONLY ROUTE TO ENSURE THAT COMPLAINANT'S MINDY JAYE ZIED AND BINNIE A. ZIED OBTAIN A "FAIR AND UNBIAS" HEARING/REVIEW OF THEIR FORMAL COMPLAINT TO THE PUBLIC UTILITIES COMMISSION - THE MAY 10, 2016 IS IN CLEAR VIOLATION OF THE COMMISSION'S APRIL 21, 2016 ORDER**

51. ON THE FACE OF THE MAY 10, 2016 ORDER:

ALJ JONES (PG. 1):

"ORDER #6
SCHEDULE FOR TESTIMONY AND **TELEPHONIC HEARING**

52. (May 10, 2016 ORDER(#6), page 3, paragraph 3):

"It is noted that the Complainants have expressed reluctance to participating in any evidentiary proceeding...

53. **Complainant's Opposition:**

Not "ANY"!!!! Just not a telephonic hearing, and not an In person hearing! **NOT RELUCTANCE!....IT IS BASED UPON DISABILITY, AGE & HEALTH ISSUES!**

¹¹ ¶54. 12/22/2015 - Petition for Interlocutory Review:

Not only was there no direction and/or instruction by the Administrative Law Judge as to any further ability for Mindy Zied to obtain the accommodation she was requesting based upon her communicative disability(s), but there were no grievance procedures or appeal procedures attached which according to the aforementioned criteria is required, but there was no alternative accommodation provision suggested or provided that would allow her and Binnie Zied to participate in this particular service that the State provides while meeting the needs of their disability(s)/Impairment(s), equal to other individual(s) would be able to partake who do not have needs for accommodation requests.

54. **(page 3, May 10, 2016 ORDER)** ALJ JONES violates the ADA, Pennsylvania Code, the Commission's April 21, 2016 ORDER/RULING, if this tribunal accepts federal funding to include but is not limited and in violation of the Rehabilitation Act of 1973, the Department of Justice's regulations, one of which clearly states the following:

55. **(12/22/2015 Petition for Interlocutory Review. page 10**

¶34. Overview

People who have vision, hearing, or speech disabilities ("communication disabilities") use different ways to communicate. For example, people who are blind may give and receive information audibly rather than in writing and people who are deaf may give and receive information through writing or sign language rather than through speech.

The ADA requires that title II entities (State and local governments) and title III entities (businesses and nonprofit organizations that serve the public) communicate effectively with people who have communication disabilities. The goal is to ensure that communication with people with these disabilities is equally effective as communication with people without disabilities

56. **¶32. Effective Communication Provisions**

Covered entities **must** provide aids and services when needed to communicate effectively with people who have communication disabilities.

57. **(page 3, May 10, 2016 ORDER)**

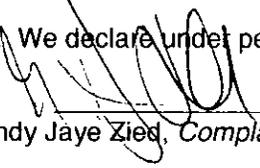
"..A telephonic hearing will be scheduled the week of July 18, 2016, by separate hearing notice...."

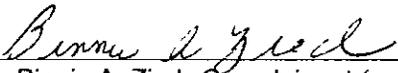
58. *....If the Complainants would prefer an in person evidentiary hearing, the Complainants are to notify the undersigned in writing of their preference no later than May 24, 2016. The in person evidentiary hearing would convene on a selected time, day and date during the week of July 18, 2016, with notice provided by separate document."*

59. **AUGUST 23, 2015 AFFIDAVIT FROM BINNIE A. ZIED**
(Exhibit B submitted in October 7, 2015 submission)

"..Based upon my age, and the fact that I have two hearing aids...."...

61. We declare under penalty of perjury that the aforementioned is true.


Mindy Jaye Zied, Complainant


Binnie A. Zied, Complainant (exhibit attached) **Date:** 5/18/2016

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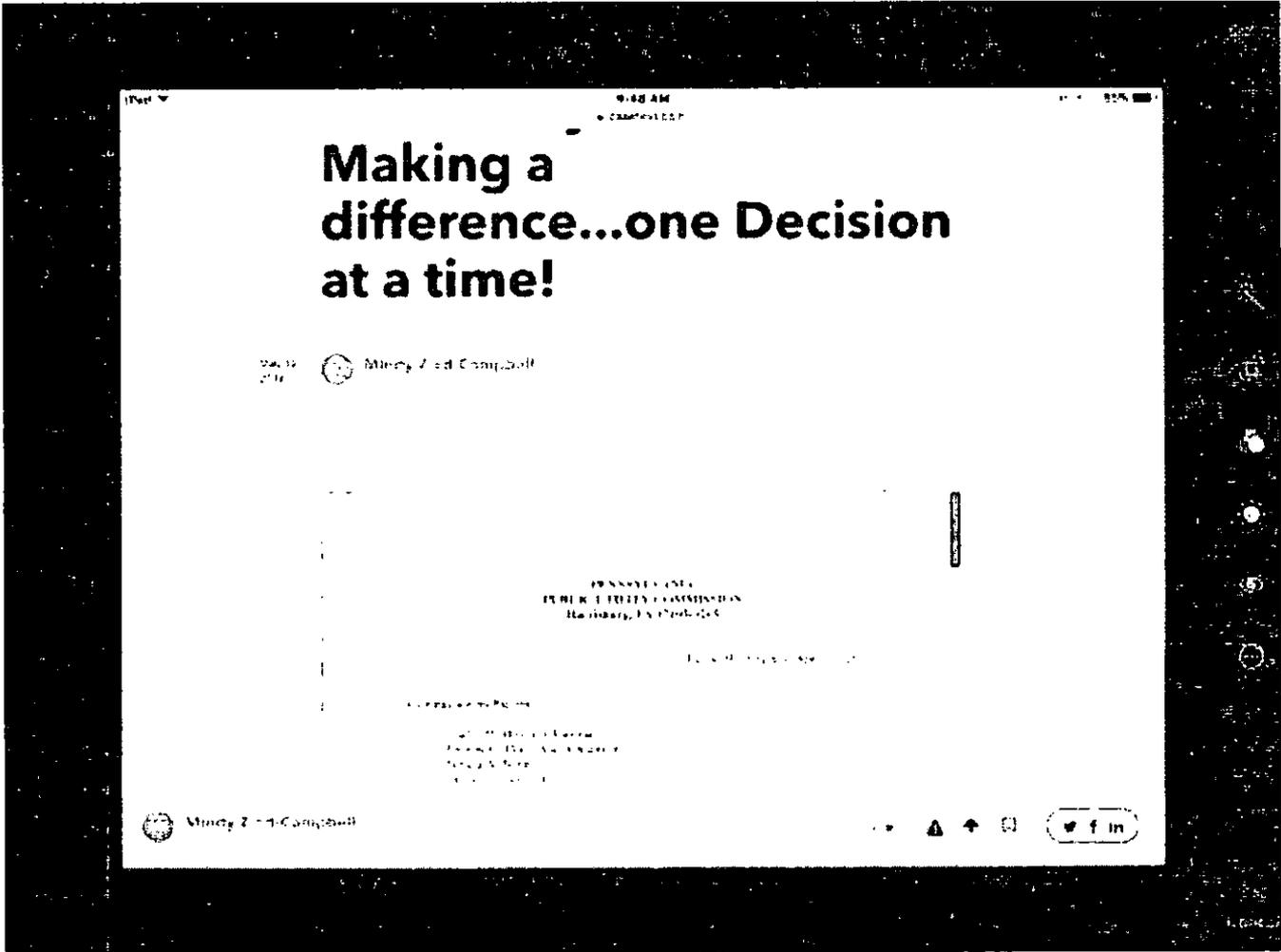
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EXHIBIT #1 (3 Pages)

PROOF OF MAY 10, 2016 INTERNET POSTS



Making a difference...one Decision at a time!

Mindy Zed Campbell

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17104-0001

Public Utility Commission

Public Utility Commission

Public Utility Commission
Harrisburg, PA 17104-0001

Mindy Zed Campbell

Facebook LinkedIn

MAY 10

Mindy J. Campbell likes Dante Alighieri's post.

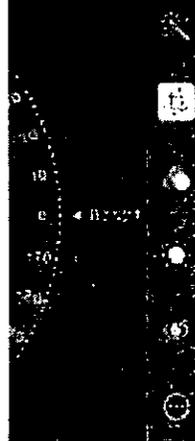
"Definition of
MOTHER:
 The greatest
 unconditional and
 infinite love we will
 ever experience in our
 existence."
 -Anonymous-

Happy mother's day mom love you enjoy your day

Mindy J. Campbell shared a link to Dante Alighieri's Timeline

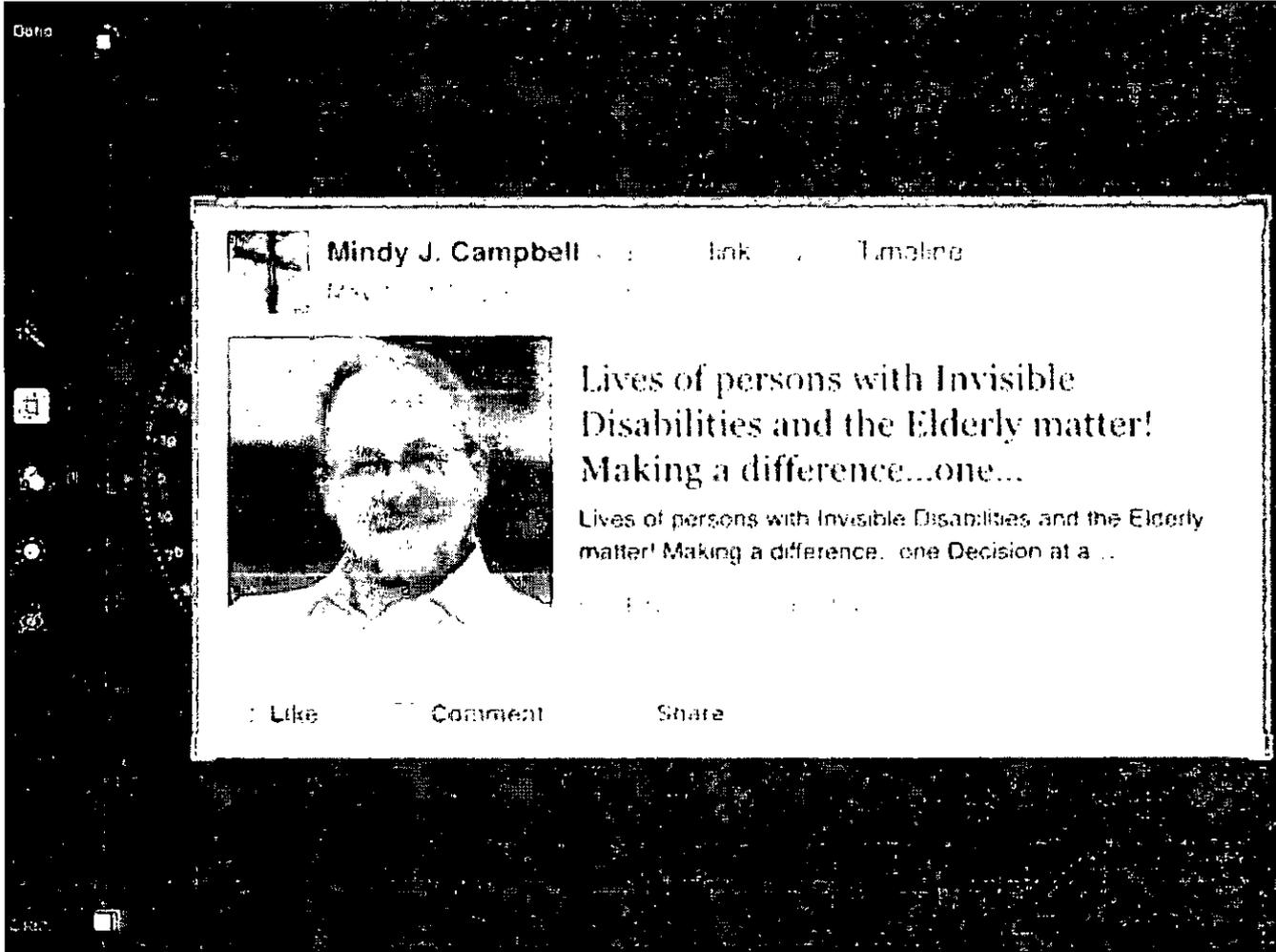


Lives of persons with Invisible Disabilities and the Elderly matter! Making a difference and



Done

Done



Mindy J. Campbell

Link

Timeline



Lives of persons with Invisible Disabilities and the Elderly matter!
 Making a difference...one...

Lives of persons with Invisible Disabilities and the Elderly matter! Making a difference. one Decision at a ...

Like

Comment

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MAY 18 2016

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CERTIFICATE OF SERVICE

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office of the Administrative Law Judge
801 Market Street, 4th Floor, Suite 4063
Philadelphia, PA 19107

MAY 18 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Mindy Jaye Zied, and)	F-2015-2500342
Binnie A. Zied, <i>Complainants</i>)	(P-2015-2520474 - April 21, 2016)
v.)	
PECO Energy Company,)	
(an Exelon Corp.), <i>Respondents</i>)	
_____)	

**IN RESPONSE TO THE P.U.C.'S APRIL 21, 2016 ORDER DUE ON OR
BEFORE MAY 11, 2016**

Mindy Jaye Zied
Binnie A. Zied
1948 Kentwood Street
Philadelphia, PA 19116
(717) 856-9607
mindyjziedcampbell@icloud.com

DATE: May 5, 2016

INTRODUCTION

On April 21, 2016, a Public Meeting was held by the Public Utilities Commission in Harrisburg, PA., pertaining to the Interlocutory question that the Complainant's, Mindy and Binnie Zied raised before the Commission.¹

In a 5-0 vote, the Commission answered the material question in the affirmative in part, (Attachment A) and issued a ruling which returned this matter to the Office of the Administrative Law Judge (OALJ) for such proceedings as may be necessary².

In their discussion, the Commission set forth the criteria which was set forth in the ALJ's November, 2015 Order, which set forth the following options for the Complainant's to proceed with:

- (1) by agreeing to mediation;
- (2) by agreeing to settlement negotiations;
- (3) through a telephonic evidentiary hearing;
- (4) through an in-person hearing; or
- (5) by withdrawing the Complaint and proceeding in the appropriate federal or municipal court.

¹ The question raised to the Commission on Interlocutory Review was as follows:

"Whether in the Commonwealth of Pennsylvania in order to be in compliance with the American with Disabilities Act of 1990, [42 U.S.C. §§ 12101-12213, specifically] §12132, an in-person hearing can be waived by a self-represented individual and/or individuals who are impaired by permanent non-physical disabilities, which include but are not limited to, communication difficulties, and/or by a ninety-seven year old individual who suffers from health problems, allowing the merits of a complaint to be heard solely on the paperwork submitted as an alternative form of communication/accommodation request to either the disabilities in question and/or the age and/or physical health of that elderly self-represented complainant."

² As stated by the Commission, (pg. 10, 11) "We find that this approach is in the public interest, as it provides a reasonable accommodation for the Complainants while protecting the due process rights of all the Parties."

On April 21, 2016, the Commission ruled that in addition to the five aforementioned criteria, that the parties may opt to an additional criteria, and that is to submit written testimony and accompanying exhibits, including direct testimony by the Complainants and rebuttal testimony by PECO, instead of presenting oral testimony during a hearing, which is consistent with Section 5.412 of the Regulations that already exist.

Also included in the April 21, 2016 ORDER were instructions for the Complainants to set forth which of the (6) criteria which would be the most appropriate in order for them to proceed with their hearing/complaint against PECO, and to do so within 20 days from the date of the April 21, 2016 ORDER.

Based upon Mindy Zied's disability(s), and prior communications with PECO and Counsel, it is believed that the first (4) criteria would not and could not work. The 5th criteria which includes the option of State Court, based on a prior experience of Ms. Zied and her inability to understand the complex procedures required by the State Court, that option would also have to be precluded by the Complainant's. Due to the fact that there is no present avenue for Ms. Zied to proceed in the Federal Court at the moment, until the Third Circuit Court of Appeals issues decisions in the pending appeals of USCA 3rd Circuit Case 15-2152; USCA 3rd Circuit Case #15-2668; USCA 3rd Circuit Case #15-2821, that, too is not an avenue of relief that the Complainants are able to pursue.

Based upon the belief that the August 24, 2015 Formal Complaint; the September, October, (October 7, 2015 containing 13 Exhibits equalling 267 pages) & November submissions (letters and motions) by both Mindy and Binnie Zied support their side of the argument, and support the allegations against PECO, the Complainants' choose to proceed on the paperwork, letters, affidavits, emails, and (continued)

additional evidence already submitted to this tribunal on the 6th criteria offered by the PUC, (written testimony and evidence submitted) based upon the health and disabilities of both Complainants.

Should additional paperwork be required as to the continuing processing of these claims, it would be of great assistance to the Complainants' for the OALJ's office to either elaborate and set forth any further instructions and/or rules and/or codes where said instructions are located to ensure that the Complainants will be capable of complying with as to the rules and regulations that they themselves are unfamiliar with, unskilled in law and procedures of the Public Utility Commission.

Respectfully Submitted,



Miridy Jaye Zied, Complainant



Binnie A. Zied, Complainant

Date: 5/5/2016

Attached: April 21, 2016 PUC COMMISSION ORDER
CERTIFICATE OF SERVICE

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MAY 18 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ATTACHMENT A

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held April 21, 2016

Commissioners Present:

Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
Pamela A. Witmer
John F. Coleman, Jr.
Robert F. Powelson

Mindy Jaye Zied and Binnie A. Zied

P-2015-2520474

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Interlocutory Review and Answer to Material Question (Petition), filed by Mindy Jaye Zied and Binnie A. Zied (Complainants) on December 22, 2015, in the above-captioned proceeding. PECO Energy Company (PECO, Respondent, or Company) did not file a brief or other response to the Petition.

In the Petition, the Complainants request interlocutory Commission review and answer to the following material question:

Whether in the Commonwealth of Pennsylvania in order to be in compliance with the Americans with Disabilities Act of 1990, [42 U.S.C. §§ 12101-12213, specifically] § 12132, an in-person hearing can be waived by a self-represented individual and/or individuals who are impaired by permanent non-physical disabilities, which include but are not limited to, communication difficulties, and/or by a ninety-seven year-old individual who suffers from health problems, allowing the merits of a complaint to be heard based solely on the paperwork submitted as an alternative form of communication/accommodation request to either the disabilities in question and/or the age and/or physical health of that elderly self-represented complainant.

The Complainants request that the Commission answer the material question in the affirmative. Petition at 2.

For the reasons more fully discussed below, we shall answer the material question in the affirmative, in part, and return this matter to the Office of Administrative Law Judge (OALJ) for such proceedings as may be necessary.

History of the Proceeding

On August 24, 2015, the Complainants filed a Formal Complaint¹ alleging that there were incorrect charges on Mindy Zied's bills from PECO for electric service. This Complaint was given the Docket No. F-2015-2500342. The Complainants claimed the amount owed was the result of an improper transfer of a balance accrued at 1948 Kentwood Street, Philadelphia, Pennsylvania (service address) prior to Mindy Zied's alleged occupancy at the service address. The Complainants also alleged that there were no meters at the service address from March 23, 2014, through June 13, 2014, to generate accurate billing of the amount of electric usage at the service address. The Complainants disputed the amounts billed over that time period. Complaint at 2. The Complainants

¹ The Complaint was a timely appeal of an informal Bureau of Consumer Services (BCS) decision at BCS Case No. 003322542.

stated that they reached a settlement with a PECO customer service representative regarding the unmetered electric usage bill from March 23, 2014, until June 13, 2014, which resulted in a balance due of \$133.94, and that PECO failed to honor that settlement. *Id.* at 5. The Complainants further contested a deposit assessed to Mindy Zied's account on the basis that PECO previously told Mindy Zied that no deposit was required for her account. *Id.* at 2.

On September 10, 2015, the Respondent filed an Answer denying all material allegations of fact and conclusions of law in the Complaint. The Respondent stated that the Complainant Mindy Zied was responsible for the transferred balance attributable to the Complainant Binnie Zied's account based on the Respondent's contention that Mindy Zied resided at the service address and benefitted from the electric service. Answer at 5-6. The Respondent also averred that the charges were correct and that the security deposit assessed to Mindy Zied's account was in compliance with its tariff and Section 1404(a) of the Public Utility Code (Code), 66 Pa. C.S. § 1404(a). Answer at 4.

On September 15, 2015, the Complainants filed an objection to the Respondent's Answer and also moved for an immediate judgment in their favor. By Order dated November 2, 2015, Administrative Law Judge (ALJ) Angela T. Jones indicated that the document the Complainants filed would be considered a preliminary objection. In the Order, the ALJ overruled the objection and denied the Complainants' request because the Motion failed to conform to the seven grounds available for filing objections set forth in 52 Pa. Code § 5.101(a)(1)-(7).

On October 7, 2015, the Complainants served the ALJ with a "Motion for an Immediate Decision/Summary Judgement" and "Brief in Lieu of Hearing," which the

ALJ treated as a Motion for Summary Judgment (Motion).² Among other things, the Complainants requested that reasonable accommodations be made and that the ALJ decide the proceeding based on written submittals or a written brief instead of an in-person or telephonic hearing. The Complainants stated that Mindy Zied is “permanently disabled with a non-physical disability” and indicated that her mental health condition does not allow her to effectively participate in a telephonic hearing. Motion at 4. The Complainants also stated that Binnie Zied’s “health would be in jeopardy” if she had to attend a hearing and noted her age of ninety-seven as a factor that prohibits her physical attendance at a hearing. *Id.* at 3. The Motion contained thirteen attachments.

By Secretarial Letter issued October 9, 2015, the Commission’s Secretary indicated that the cover page of the Complainants’ Motion was sent to the Office of Governor Tom Wolf. The Secretarial Letter stated that, since this matter is still pending before the Commission and due to the statutory prohibition on *ex parte* communications, the Secretary served a copy of the Complainants’ correspondence to Governor Wolf’s office on the ALJ and PECO in order to cure any *ex parte* communication.

On November 2, 2015, PECO filed a Motion to File Response to Complainants’ Motion for Summary Judgment *Nunc Pro Tunc*. The Respondent acknowledged that its response was not timely due to an administrative oversight. The Respondent also noted that the Complainants’ Motion was procedurally defective because it did not contain a Notice to Plead.

PECO also filed a Response to the Complainants’ Motion on November 2, 2015. In its Response, PECO disputed any settlement between the Parties and denied that the Company removed the meter at the service address without notice. PECO averred

² The ALJ noted that the Motion was not filed with the Commission. Accordingly, the ALJ filed the Motion with the Secretary’s Bureau on November 10, 2015, and provided a copy of the Motion to PECO’s counsel.

that there were several genuine issues of material fact pending in this case which would make summary judgment inappropriate. The Respondent contended that an in-person hearing was required to assess the credibility of witnesses and the amount of witnesses and documents potentially required to effectively advocate the matter.

In the Order Denying Motion for Summary Judgment dated November 17, 2015 (*November 2015 Order*), the ALJ initially found that it was reasonable to consider PECO's Response, because the ALJ had not yet ruled on the Motion prior to PECO filing its Response, *nunc pro tunc*, and the Complainants' Motion failed to contain the required Notice to Plead. *November 2015 Order* at 5. In ruling on the Motion, the ALJ concluded that the documents presented by the Complainants did not excuse their attendance because, as listed Complainants in this case, they are responsible for the allegations made in the Complaint and bear the burden of proof concerning the allegations. The ALJ stated that the Complainants' filings contain material questions of fact, including whether PECO's actions toward the Complainants constituted fraudulent conduct; whether the removal and replacement of the meter at the service address complied with the Commission's Rules and Regulations; whether PECO and the Complainants reached a settlement; and whether the Complainants' bills for electric service were correct. *Id.* at 7. The ALJ provided the Complainants with the following five options for proceeding with the Complaint:

- (1) by agreeing to mediation;
- (2) by agreeing to settlement negotiations;
- (3) through a telephonic evidentiary hearing;
- (4) through an in-person hearing; or
- (5) by withdrawing the Complaint and proceeding in the appropriate federal or municipal court.

Id. at 7-8. The ALJ determined that, because material issues of fact were present, summary judgment was not appropriate. Accordingly, the ALJ directed the

Complainants to inform the ALJ and the Respondent regarding their choice for presenting the Complaint based on the five options provided above. *Id.* at 8.

On December 22, 2015, the Complainants filed the instant Petition. The Petition requested a stay of the hearing that was scheduled for January 28, 2016.

By Order dated December 28, 2015, ALJ Jones directed that the proceeding at Docket No. F-2015-2500342 be stayed until the Commission rules on the instant Petition.

By Secretarial Letter issued December 28, 2015, the Commission waived the thirty-day period for consideration set forth in 52 Pa. Code § 5.303 in order to provide adequate time for a thorough review of the question raised. *See* 52 Pa. Code § 1.2(c); *see also, C.S. Warthman Funeral Home, et al. v. GTE North, Incorporated*, Docket No. C-00924416 (Order entered June 4, 1993).

Discussion

Legal Standards

As a preliminary matter, we note that any issue we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Complainants filed their Petition pursuant to Section 5.302 of the Commission's Regulations, 52 Pa. Code § 5.302. During the course of a proceeding and pursuant to the provisions of 52 Pa. Code § 5.302, a party may seek interlocutory review

and answer to a material question which has arisen or is likely to arise. The standards for interlocutory review are well established. Section 5.302 of our Regulations requires that the petitioning party "state . . . the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding." The pertinent consideration is whether interlocutory review is necessary in order to prevent substantial prejudice – that is, the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process. *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A-310200F0002, *et al.* (Order entered June 10, 1999); *Pa. PUC v. Frontier Communications of Pa. Inc.*, Docket No. R-00984411 (Order entered February 11, 1999); *In re: Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985).

Pursuant to 52 Pa. Code § 5.303, the Commission may take one of the following courses of action on requests for interlocutory review and answer to a material question:

- (1) Continue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the parties.
- (2) Determine that the petition was improper and return, the matter to the presiding officer.
- (3) Decline to answer the question.
- (4) Answer the question.

Generally, Petitions for Interlocutory Review are not favored, as the preferred approach is to permit proceedings to move forward in the normal course in order to provide all parties, the presiding officer, and the Commission with a full opportunity to develop the record, brief issues, and present arguments at each stage. *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Order entered October 23, 2009), at 3.

The Complainants' Petition

The Complainants' Petition concerns ALJ Jones' rulings in the *November 2015 Order*. The material question raised in the Petition is as follows:

Whether in the Commonwealth of Pennsylvania in order to be in compliance with the Americans with Disabilities Act of 1990, [42 U.S.C. §§ 12101-12213, specifically] § 12132, an in-person hearing can be waived by a self-represented individual and/or individuals who are impaired by permanent non-physical disabilities, which include but are not limited to, communication difficulties, and/or by a ninety-seven year-old individual who suffers from health problems, allowing the merits of a complaint to be heard based solely on the paperwork submitted as an alternative form of communication/accommodation request to either the disabilities in question and/or the age and/or physical health of that elderly self-represented complainant.

The Complainants request that the Commission answer the material question in the affirmative. Petition at 2. The Complainants have attached the thirteen documents that were attached to their October 7, 2015 Motion.

In support of their Petition, the Complainants aver that Pennsylvania and federal law set forth requirements regarding the provision of reasonable accommodation requests for individuals with disabilities. The Complainants cite to 201 Pa. Code Ch. 2, which governs reasonable accommodations under the Americans with Disabilities Act of 1990 (ADA), and to the ADA, specifically 42 U.S.C. § 12132.³ Petition at 8-9. The Complainants state that Mindy Zied is considered a person who is in a protected class

³ Section 12132 provides the following: "Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

based on her permanent psychological disabilities, which include bipolar disorder, paranoid disorder, and communication impairments. They also state that Binnie Zied is ninety-seven, suffers from health issues, and is a cancer survivor. Petition at 3, 4. The Complainants argue that the ALJ did not provide direction or instruction concerning the further ability for Mindy Zied to obtain the accommodation she was requesting based on her communicative disabilities or provide any information about appeal procedures. The Complainants claim that the ALJ did not allow for a reasonable accommodation for both Complainants that would enable them to effectively participate in the hearing process in this case. Petition at 14-15.

Disposition

Based upon our review of the Petition and the applicable law, we find that the Complainants' Petition supports the necessity for interlocutory review in order to prevent substantial prejudice or to expedite the conduct of the proceeding. The manner in which the Complainants are permitted to present their case will impact the due process rights of all Parties and their abilities to effectively participate in this proceeding. Because the Complainants' accommodation request affects the presentation of the Complainants' entire case and any testimony and exhibits that the Complainants wish to submit for the record, any potential error or prejudice that may flow from the *November 2015 Order* should be addressed at this time. We find that doing so will expedite the conduct of this proceeding and provide guidance to the Parties concerning the manner in which they will be expected to present their cases, while also ensuring the development of a factual record upon which the ALJ can issue a decision.

The material question presented by the Complainants requests a waiver of an in-person hearing and the ability to present the merits of the Complaint case based

solely on paperwork which they submit.⁴ In the *November 2015 Order*, the ALJ provided the Complainants with the following options for proceeding with their Complaint:

- (1) by agreeing to mediation;
- (2) by agreeing to settlement negotiations;
- (3) through a telephonic evidentiary hearing;
- (4) through an in-person hearing; or
- (5) by withdrawing the Complaint and proceeding in the appropriate federal or municipal court.

While we agree with the ALJ that the Complainants may proceed with any of these five options, we conclude that we can provide the Complainants with an additional accommodation option that is consistent with our procedural Regulations.

Consistent with Section 5.412 of our Regulations, the Parties may submit written testimony and accompanying exhibits, including direct testimony by the Complainants and rebuttal testimony by PECO, instead of presenting oral testimony during a hearing. We note, however, that any written testimony and exhibits submitted by the Parties will still be subject to the procedural rules regarding admissibility and cross-examination of the sponsoring witness. 52 Pa. Code § 5.412(c). The ALJ has the authority to establish the schedule and directives for the filing and authentication of written testimony and exhibits and for cross-examination by other Parties. To the extent that the Parties reach settlements and/or stipulate to facts or to the authenticity of documents, 52 Pa. Code §§ 5.232, 5.234, or admit to facts, 52 Pa. Code § 5.350, this may reduce the necessity for oral presentation during an in-person or telephonic hearing.

We find that this approach is in the public interest, as it provides a reasonable accommodation for the Complainants while protecting the due process rights

⁴ To the extent that the Complainants are seeking a determination of a violation or appeal rights under the ADA, the Commission does not have jurisdiction over such actions. As the ALJ indicated, ADA claims should be brought before the appropriate federal or municipal court.

of all of the Parties. Because there are material issues of fact present, we cannot waive the Parties' rights to cross-examination or prohibit the Parties from responding to arguments made by each other. *See, Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (stating that the Commission is bound by the due process provisions of constitutional law which include "notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal"). Based on our determination, we direct that, within twenty days of the entry date of this Opinion and Order, the Complainants provide in writing to the ALJ and counsel for the Respondent their choice on how to present the Complaint from the six options that have been provided.

Conclusion

For the reasons set forth above, we shall answer the material question presented by the Complainants in the affirmative, in part, and return this matter to the Office of Administrative Law Judge, consistent with the discussion in this Opinion and Order. **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Interlocutory Review and Answer to Material Question, filed by Mindy Jaye Zied and Binnie A. Zied on December 22, 2015, is granted.

2. That the following question is answered in the affirmative, in part, consistent with this Opinion and Order:

Whether in the Commonwealth of Pennsylvania in order to be in compliance with the Americans with Disabilities Act of 1990, [42 U.S.C. §§ 12101-12213, specifically] § 12132, an

in-person hearing can be waived by a self-represented individual and/or individuals who are impaired by permanent non-physical disabilities, which include but are not limited to, communication difficulties, and/or by a ninety-seven year-old individual who suffers from health problems, allowing the merits of a complaint to be heard based solely on the paperwork submitted as an alternative form of communication/accommodation request to either the disabilities in question and/or the age and/or physical health of that elderly self-represented complainant.

3. That this matter is returned to the Office of Administrative Law Judge for such proceedings as may be necessary, consistent with this Opinion and Order.

4. That, within twenty days of the entry date of this Opinion and Order, Mindy Jaye Zied and Binnie A. Zied shall provide in writing to the Administrative Law Judge and counsel for PECO Energy Company their choice for presenting the Complaint, consistent with the options discussed in this Opinion and Order.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 21, 2016

ORDER ENTERED: April 21, 2016

RECEIVED

MAY 18 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

**BEFORE THE
PENNSYLVANIA UTILITY COMMISSION**

MINDY JAYE ZIED,)
BINNIE A. ZIED,)
Complainants)
))
v.)
))
PECO ENERGY COMPANY/EXELON,)
Respondents)
_____)

Docket No. F-2015-2500342

RECEIVED

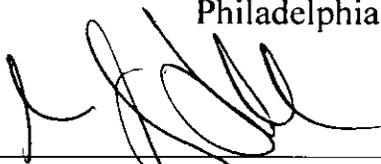
MAY 18 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I, Mindy Jaye Zied hereby certify that I have this day served a copy of
Complainants' Response to the PUC Commission's April 21, 2016 ORDER, upon all
interested parties by mailing USPS first class postage pre-paid mail today to:

Shawane L. Lee
PECO Legal Department
Counsel for PECO Energy Company
2301 Market Street, S23-1
P. O. Box 8699
Philadelphia, PA 19101-8699



Mindy Jaye Zied
1948 Kentwood Street
Philadelphia, PA 19116
(717)856-9607
mindyjziedcampbell@icloud.com

Date: May 5, 2016

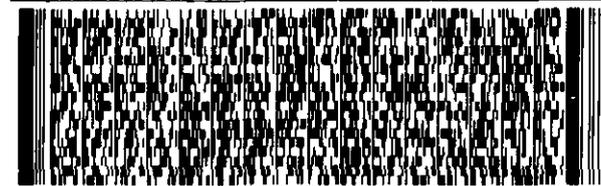
FROM: (267) 678-7555
Binnie Zied
1948 Kentwood Street
Philadelphia PA 19116
US

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CAD: 6892462/SSFO1704
DIMMED: 13 X 11 X 2 IN

TO **Comm. Of PA**
PA Public Utilities Comm.
400 North Street
Comm. Keystone BLDG 2nd Floor
Harrisburg PA 17120

(US)

(000) 000-0000 REF: DEPT:
INU: PG:

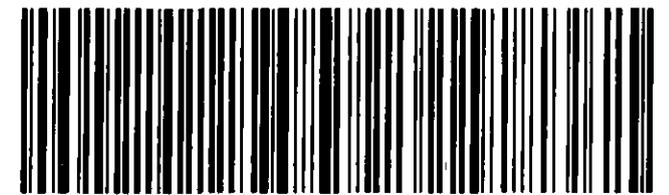


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IN THE COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITIES COMMISS
400 NORTH STREET,
COMMONWEALTH KEYSTONE BLDG, 2ND FL
HARRISBURG, PA 17120

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