

September 26, 2016

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
Commonwealth Keystone Building, 2 North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2016-2565262
Craig Jackson v. Metropolitan Edison Company
Preliminary Objection of Met-Ed**

Dear Secretary Chiavetta:

Attached for filing is the Preliminary Objection of Respondent, Metropolitan Edison Company (Met-Ed), to the Formal Complaint of Craig Jackson (Complainant).

A copy of the Preliminary Objection has been forwarded to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm
Attachment

cc: Tori Giesler, Esquire, FirstEnergy Service Company [w/enc.]
Craig Jackson [w/enc.]

**Re: Docket No. C-2016-2565262
Craig Jackson v. Metropolitan Edison Company
Preliminary Objection of Met-Ed**

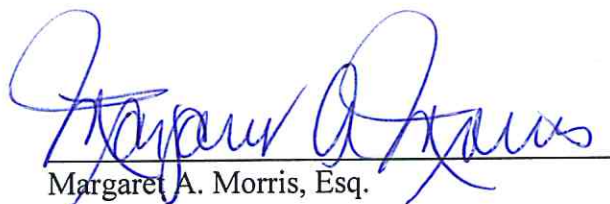
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the person(s) listed below, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

Via Electronic and First Class Mail

Craig Jackson
275 Frutchey Court, Lot 30
Mt. Bethel, PA 18343
Craig.Jackson@xaviermanors.com

Dated: September 26, 2016


Margaret A. Morris, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CRAIG JACKSON

v.

METROPOLITAN EDISON COMPANY

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:
:
:
:

Docket No. C-2016-2565262

NOTICE TO PLEAD

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

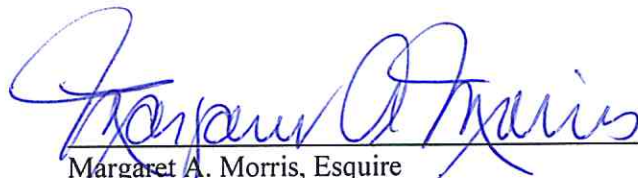
File with:

Rosemary Chiavetta, Esquire
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building – 2 North
P.O. Box 3265
Harrisburg, PA 17105

With a copy to:

Margaret A. Morris, Esquire
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104

Date: September 26, 2016



Margaret A. Morris, Esquire
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Reger Rizzo & Darnall LLP
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2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 (tel.)
(215) 495-6600 (fax)
mmorris@regerlaw.com

Counsel for Metropolitan Edison Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CRAIG JACKSON	:	
	:	
v.	:	Docket No. C-2015-2517345
	:	
METROPOLITAN EDISON COMPANY	:	

PRELIMINARY OBJECTIONS OF METROPOLITAN EDISON COMPANY

TO THE PENNSYLVANIA PUBLIC SERVICE COMMISSION:

Metropolitan Edison Company (Met-Ed or Company), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.101, hereby files this Preliminary Objection, and respectfully requests that the Commission dismiss, in its entirety, the above-captioned Formal Complaint.

In support thereof, Met-Ed states as follows:

I. INTRODUCTION AND BACKGROUND

1. Met-Ed furnishes electric service to approximately 560,000 customers throughout its certificated service territory, which includes all or portions of 15 counties and encompasses approximately 3,300 square miles of Eastern Pennsylvania. Met-Ed is a “public utility” and an “electric distribution company” as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 102, 2803.

2. Met-Ed maintains approximately 1,300 corridor miles of transmission lines operating at 69 kV (kilovolts) or higher and approximately 24,000 miles of distribution lines operating at less than 69 kV.

3. Pursuant to Chapters 15 and 28 of the Code, Met-Ed has a statutory obligation to provide safe, efficient, reasonable service and facilities and to make all repairs or improvements

in or to such service or facilities as are reasonably necessary for the accommodation, convenience, and safety of its customers.

4. The Complainant is a customer and owns the property located at 275 Frutchey Court, Mt. Bethel, Pennsylvania.

5. Met-Ed holds and maintains right-of-way (ROW), pursuant to a valid and irrevocable ROW and easement, upon a portion of Complainant's property. The ROW contains a 115 kV transmission line that is maintained by Met-Ed.

6. On August 28, 2016, Complainant filed the above-captioned Complaint with the Commission. A copy of the Formal Complaint is provided as Attachment 1.

7. The Complaint alleges claims associated with the valid and irrevocable ROW and easement by and between Met-Ed and Complainant. The Complainant avers that Met-Ed's work plan was not permitted based upon the plain language of the ROW and easement. (*See* Complaint at Attachment A.)

8. The Complainant seeks monetary compensation for the fair market value of the removed trees.

9. The Complainant requests the Commission prohibit Met-Ed from exercising its rights under the existing valid ROW and easement. (*See* Complaint at Attachment B)

10. On September 26, 2016, Met-Ed filed an Answer and New Matter to the Complaint, admitting in part and denying in part the factual basis of the Complainant's allegations.

11. For the reasons set forth below, the Commission is without subject matter jurisdiction to adjudicate certain claims set forth in the Complaint. Therefore, Met-Ed requests that the Complaint be dismissed in part.

II. STANDARD OF REVIEW

12. Pursuant to the Commission's regulations, preliminary objections in response to a Complaint may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

52 Pa. Code § 5.101(a).

13. Met-Ed's preliminary objection is filed pursuant to 52 Pa. Code § 5.101(a)(1), because the Complainant has alleged issues that are outside the scope of the Commission's jurisdiction. The Complainant has requested damages and claims concerning property rights arising from the interpretation of the ROW and easement agreement with Met-Ed that are within the exclusive jurisdiction of the Courts of Common Pleas. Thus, that portion of the Complaint should be dismissed.

14. In ruling on preliminary objections, all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom must be accepted. *Stilp v. Commonwealth*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (*Stilp*) (citing *Dep't of Gen. Serv. v. Bd. Of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)); accord *Complaint of Nat'l Fuel Gas Distrib. Corp. and Petition for an Order to Show Cause Why New Mountain Vantage GP, LLC And Others Acting in Concert with It Should Not Be Required to Apply for a Certificate of Public Convenience Approving the Acquisition of Control of Nat'l Fuel Gas Dist. Corp.*, Docket No. P-00072343

(Dec. 26, 2007). Conclusions of law, unwarranted factual inferences, argumentative allegations and expressions of opinion, however, need not be accepted as true. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007). Preliminary objections should be sustained unless it appears with certainty that the law would permit the relief requested under the facts asserted. *Stilp*, at 781.

III. ARGUMENT

15. Met-Ed incorporates by reference Paragraphs 1 through 14 as if fully set forth herein.

16. Specific allegations in the Complaint do not allege a dispute over the provision of utility service that is within the jurisdiction of the Commission. Instead, the specific allegations are focused exclusively on averments that the Complainant's property rights have been violated as a result of Met-Ed's work plan and the request for damages.

17. The Commission only has those duties, powers, and responsibilities as expressly, or by necessary implication, given to it by the General Assembly. *Tomb v. Pa. Elec. Co.*, Docket No. C-2008-2036378, 2008 Pa. PUC LEXIS 994 (Dec. 8, 2008) (citing *Rogoff v. The Buncher Co.*, 395 Pa. 477, 151 A.2d 83 (1959)). The Commission must act within, and cannot exceed, its jurisdiction. The mere fact that a party to an action is a regulated utility does not automatically confer subject matter jurisdiction upon the Commission. *DeFrancesco v. W. Pa. Water Co.*, 499 Pa. 374, 453 A.2d 595 (1982).

18. The Commission has determined that it is not the proper forum for resolving property rights controversies. *Boczar v. PPL Elec. Utils. Corp.*, Docket No. C-20016332 (Order entered February 10, 2003); *Dengler v. Metropolitan Edison Co.*, Docket No. C-2009-2112197,

2009 Pa. PUC LEXIS 167 (Oct. 16, 2009); *Mauro v. Pa. Elec. Co.*, Docket No. C-2009-2114087 (July 15, 2010). Rather, such controversies are a matter for a court of general jurisdiction. *Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Sept. 15, 1999). In *Boczar*, the complainant alleged that the utility was not authorized to place electric facilities on his property. The Commission noted that the utility produced the ROW agreements for the facilities in question and concluded that it was without jurisdiction to determine property rights concerning the agreements.

19. The allegations contained in the Complaint that relate to property rights and the interpretation of valid ROW and easement. A copy of recorded easement and ROW is provided as Attachment 2. These matters, particularly the interpretation of the ROW and easement, are exclusively within the jurisdiction of the Courts of Common Pleas. Consequently, Complainant's claim on this issue must be dismissed for lack of Commission jurisdiction.

20. The Complainant has stated his dispute involves real property and the interpretation of a valid grant of ROW and easement, which are clearly outside the Commission's subject matter jurisdiction. Therefore, the Commission should grant the Company's preliminary objection pursuant to 52 Pa. Code § 5.101(a)(1).

21. The Complainant also seeks monetary compensation for the fair market of the trees removed from the ROW.

22. Pennsylvania courts have long held that the enforcement powers of the Commission do not include the power to award monetary damages. *Elkin v. Bell*, 491 Pa. 123, 420 A. 2d 371 (1980); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1978); see *Nagy v. Bell Tel. Co.*, 436 A.2d 701 (Pa, Super. 1981) Thus, the Code does not give the

Commission jurisdiction over a claim for monetary damages. *Behrend, supra; Brockway Glass, supra; Bones v. Bates Taxi, Inc.*, 51 Pa. P.U.C. 346 (1977).

23. The Court of Common Pleas retains original jurisdiction over suits for monetary damages. *Behrend, supra.*

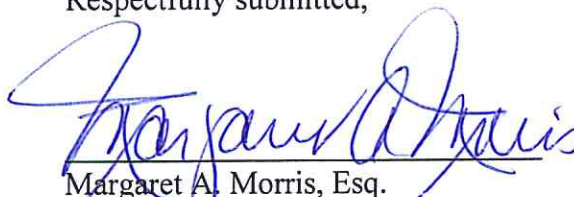
IV. CONCLUSION

24. Met-Ed incorporates by reference Paragraphs 1 through 23, *supra*, as though set forth fully herein.

25. The scope of the Commission's jurisdiction over the matters raised in the Complaint is well-settled. The Commission lacks subject matter jurisdiction over questions involving claims associated with private property rights and the interpretation of a valid ROW and easement or to award damages.

26. Accordingly, the Commission should enter an order, pursuant to 52 Pa. Code § 5.101, dismissing that portion of the above-captioned Complaint.

Respectfully submitted,



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(215) 495-6600 fax
mmorris@regerlaw.com

Date: September 26, 2016

Counsel for Metropolitan Edison Company

Docket No. C-2016-2565262
Craig Jackson v. Metropolitan Edison Company

Attachment 1

Formal Complaint

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an informal complaint.

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name Craig JACKSON

Street/P.O. Box 275 Frutchey Ct Apt #

City Mt Bethel State PA Zip 18343

County Northampton

Telephone Number(s) Where We Can Contact You During the Day:

(202) 271-4490 (home) (202) 271-4490 (mobile)

E-mail Address (optional): Craig.jackson@xaviermarrs.com

Utility Account Number (from your bill) 100 015 717 315

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name

Street/P.O. Box

City State Zip

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

Met-Ed

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3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- ELECTRIC WASTEWATER/SEWER
 GAS TELEPHONE/TELECOMMUNICATIONS (local, long distance)
 WATER MOTOR CARRIER (e.g. taxi, moving company, limousine)
 STEAM HEAT

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.

Other (explain).

See Attachment A

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. **Requested Relief**

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

See Attachment B

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. **Protection From Abuse (PFA)**

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. **Prior Utility Contact**

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

- c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

See Attachment

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. Verification and Signature

You must sign your complaint. Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink**. If you do not sign the Formal Complaint, the PUC **will not accept it**.

Verification:

I Craig Jackson, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



(Signature of Complainant)

7-31-2016

(Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee. If the Formal Complaint is **not signed** by one of these individuals, the PUC **will not accept it**.

10. Two Ways to File Your Formal Complaint

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

Note: Formal Complaints sent by fax or e-mail will **not** be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

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PA PUC
SECRETARY'S BUREAU

Keep a copy of your Formal Complaint for your records.

Attachment A:

Approximately 19 years ago, I built a home at this address. In addition, approximately 18 years ago, I planted some Colorado Blue Spruce on the right side of the property as facing the house due to my allergic reaction to dust because of a farm on the right side of the property. The spruces were approximately 50 feet from the power line. My objective was to place the spruces at a distance from the line which would not hinder MetEd from accessing the lines and far enough to dispel any danger to the lines.

Eighteen years later, MetEd contacted me to notify me that they wanted to cut 2 or 3 trees at the front of the property. The representative told me that he was part of MetEd affiliated with the forest or tree control unit. He told me to contact a lady in MetEd who is an Arborist for MetEd.

After several interactions with MetEd the tree count increased to 7 trees. Afterwards, the count aggrandized to 13 trees. I spoke to two supervisors at MetEd but they refused to listened to my concerns. I explained to them about my allergies and a well on the right side of the property. I told the supervisor that I didn't want MetEd to spray the property due to the well; however, MetEd sprayed the property against my wish. There isn't any language in the deed that gave MetEd permission the spray the easement. I will enumerate my issues in the bullets below:

- 1.) MetEd didn't grind the roots or replace the grass with sod to restore the property to its original condition.
- 2.) MetEd refused to pay me the fair market value for the trees.
- 3.) MetEd resorted to harassment and racial profiling for cutting the trees. MetEd didn't cut the Caucasian's trees living in the area; although, other neighbor trees are closer to line.
- 4.) MetEd stated that they have the right to cut any trees on the easement; however, it is a violation of the law to implement their haphazard tree policy predicated on race.
- 5.) MetEd was aware of the trees eighteen years ago but waited until now to cut the trees. The trees were easily transplantable at that time. However, MetEd never divulged any deleterious hazards of the existence of the trees. MetEd didn't conduct a personal face to face meeting before cutting the trees.
- 6.) I notified MetEd not to spray chemicals on the easement due to a near-by well due to run-off of chemicals from the easement to the well. The deed didn't give MetEd permission to spray the easement. However, MetEd sprayed dangerous chemicals.
- 7.) There was a tree leaning at a 45 degree angle due to a hurricane. MetEd cut the ten trees preceding this tree starting at the front of the property. The top of the tree was pointed towards the power line in addition since this had fallen it was closer to the power line then the trees that MetEd cut. However, MetEd left this tree as-is. This tree poised a greater danger of encroaching on the easement then the other trees. It was obvious that MetEd objective was harassment and racial profiling instead of clearing the easement for accessibility concerns.

In summation, I notified my local state representative about the trees. A representative from his property surveyed my property. Afterwards, she stated "She doesn't understand why they cut the trees because they didn't pose a danger to the power lines." Lastly, I respectfully invite the Pennsylvania Public Utility Commission to conduct an on-site inspection of the property as well as neighbors properties. Afterwards, I am confident that PUC findings will concur with my conclusion.

Attachment B:

- 1.) Fine Met-Ed for harassment due to race.
- 2.) Fine Met-Ed for not adhering to a consistent policy for cutting trees.
- 3.) Discipline the pertinent personnel for harassment due to racial profiling.
- 4.) Ensure that Met-Ed restores the property to its original state.
- 5.) Ensure that Met-Ed doesn't spray any more chemicals on the property.

Craig Jackson
10130 Counselman Rd
Potomac, MD 20854

47

HARRISBURG PA 17120

ZIP



(420) 17120

F



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20854
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Secretary
Pennsylvania Public Utility Com.
400 North Street
Harrisburg, Pennsylvania 17