



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

February 23, 2006

C-20039944
C-20030069
C-20030150

JOSEPH G BLACK
2500 SANDY LANE
EASTON PA 18045-2132

**DOCUMENT
FOLDER**

Joseph G. Black, Nora J. Kraeuter, and Larry C. Rappa v. Metropolitan Edison Company

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on January 27, 2006 has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

JS
encls
cert. mail

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1300 HOWARD LANE
EASTON PA 18045

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DOCKETED
SEP 20 2007

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held January 27, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H Cawley, Vice Chairman
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick

DOCUMENT
FOLDER

Joseph Black
v.
Metropolitan Edison Company

C-20039944

Nora J. Kraeuter
v.
Metropolitan Edison Company

C-20030069

Larry C. Rappa
v.
Metropolitan Edison Company

C-20030150

OPINION AND ORDER

DOCKETED
SEP 20 2007

BY THE COMMISSION:

Before the Commission for consideration and disposition are the Exceptions of Larry C. Rappa (Complainant) filed on April 20, 2004, to the April 8, 2004 Initial Decision of Administrative Law Judge (ALJ) Ky Van Nguyen. The Respondent filed Reply Exceptions on April 30, 2004.

Complainant filed Exceptions. The Respondent filed Reply Exceptions on April 28, 2004, as previously noted.

Discussion

We note that any issue or Exception, which we do not specifically address herein, has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corporation 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).

In the Initial Decision, ALJ Nguyen made ten (10) Findings of Facts (I.D. at 3-4) and reached one (1) Conclusion of Law (I.D. at 5). We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless expressly or by necessary implication, they are reversed or modified by this Opinion and Order.

Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

The Complainant asserted that the Respondent's power station has doubled in size in the last ten years and that the power station's presence poses significant health risks and diminution in his property's value due to the power

In addition, the Complainant sought to testify concerning matters discussed in an informal meeting. The Respondent objected during the hearing asserting that the matters were part of settlement discussions. Section 5.231(a) of our Regulations, 52 Pa. Code § 5.231(a), concerning this issue provides, in pertinent part, that:

It is the policy of the Commission to encourage settlements. Nothing contained in this chapter or Chapter 1 or 3 (relating to rules of administrative practice and procedure; and special provisions) precludes a participant in a proceeding from submitting, at any time, offers of settlement or proposals of adjustment, or from requesting conferences for that purpose. Participants may request that the presiding officer participate in the settlement conferences or that an additional presiding officer or mediator be designated to participate in the settlement conferences. *Proposals of settlement, of adjustment, or of procedure to be followed, and proposed stipulations not agreed to by every participant, will not be admissible in evidence against a counsel or participant claiming the privilege.*

52 Pa. Code § 5.231(a) (emphasis added).

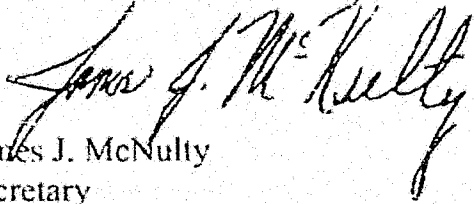
The Complainant sought to offer into evidence his discussion with the Respondent, wherein the Respondent offered to bury the electrical lines underground as a solution to the Complainant's concerns. (Tr. at 6-7). When the Respondent objected to this testimony, the ALJ sustained the Respondent's objections in support of their claim of privilege for proposals of settlement not agreed to among the parties. (Tr. at 7). Consequently, the Complainant could not offer into evidence any matters discussed during the informal meeting. After reviewing the facts and the law on this issue, we agree with the ALJ's decision to sustain Respondent's objection of the privileged nature of the proposals of settlement.

we also agree with the ALJ's dismissal, with prejudice, of Ms. Kraeuter and Mr. Black's Complaints for failure to prosecute. Accordingly, we shall adopt the ALJ's Initial Decision, finding it to be reasonable and in accordance with sound administrative practice; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Larry C. Rappa to the Initial Decision of Administrative Law Judge Ky Van Nguyen, issued April 8, 2004, are denied.
2. That the April 8, 2004 Initial Decision of Administrative Law Judge Ky Van Nguyen is adopted.
3. That the Complaint of Larry C. Rappa against Metropolitan Edison Company is dismissed for failure to carry the burden of proof.
4. That the Complaints of Nora J. Kraeuter and Joseph Black are dismissed with prejudice for failure to prosecute.
5. That the Secretary shall mark this Docket as closed.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: January 27, 2006

ORDER ENTERED: FEB 23 2006