

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Zakkiyah Salahuddin	:	
	:	
v.	:	C-2016-2547092
	:	
Metropolitan Edison Company	:	

**ORDER**  
**ADMITTING LATE-FILED EXHIBITS**

On April 21, 2016, Zakkiyah Salahuddin filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Met-Ed or the Company), Docket No. C-2016-2547092. In her complaint, Ms. Salahuddin averred that there are incorrect charges on her bill and that she is having a safety, reliability or quality problem with her utility service. Ms. Salahuddin also indicated that she is “requesting an appeal.” For relief, Ms. Salahuddin requested that she would like “the company to remove all incorrect charges on the account.”

On June 13, 2016, Met-Ed filed an answer and new matter in response to the complaint. In its answer, Met-Ed admitted or denied the various averments made by Ms. Salahuddin. In particular, Met-Ed denied that there are incorrect charges on the account or that there is a reliability or quality problem with the electric service provided to the service address. Met-Ed also noted a Final Order issued by the Commission on July 23, 2015 regarding a complaint previously filed by Ms. Salahuddin against Met-Ed making final an initial decision dismissing that prior complaint and that Ms. Salahuddin’s “appeal” of that decision is not proper before the Commission. In its new matter, which was accompanied by a notice to plead, Met-Ed reiterated its position that the Commonwealth Court of Pennsylvania has exclusive jurisdiction to entertain and rule on final actions of the Commission. Met-Ed requested that Ms. Salahuddin’s complaint be dismissed with prejudice or denied in its entirety.

Also on June 13, 2016, Met-Ed filed a preliminary objection in response to Ms. Salahuddin's complaint. In its preliminary objection, which was also accompanied by a notice to plead, Met-Ed averred that, because the Commonwealth Court of Pennsylvania has exclusive jurisdiction to entertain and rule on final actions of the Commission, Ms. Salahuddin's complaint contains impertinent matter in its requested relief. Met-Ed, therefore, reiterated its position that Ms. Salahuddin's complaint should be dismissed in its entirety.

Ms. Salahuddin filed neither an answer to Met-Ed's preliminary objection nor to its new matter. Met-Ed's preliminary objection was granted in part and denied in part by order dated July 22, 2016. Ms. Salahuddin's appeal of the Commission's decision to dismiss a previously filed complaint was stricken from the complaint and all remaining issues raised in the complaint were allowed to proceed to a hearing.

On August 8, 2016, a Call-In Telephone Hearing Notice was issued scheduling a hearing for this case for Thursday, September 15, 2016 and assigning me as the presiding officer. A prehearing order dated August 8, 2016 was issued setting forth various procedural rules that would govern the hearing.

On August 18, 2016, Met-Ed filed a motion to compel discovery responses. Met-Ed averred that it served discovery on Ms. Salahuddin on July 26, 2016 and that no objections to the discovery or answers were timely received. Met-Ed requested that an order be issued compelling Ms. Salahuddin to fully and completely respond to the discovery requests or have the complaint dismissed in its entirety. Ms. Salahuddin did not file an answer to the motion. Met-Ed's motion to compel was granted via order dated August 26, 2016 wherein Ms. Salahuddin was directed to provide answers to the interrogatories within ten days or face sanctions, including possible dismissal of the complaint.

On September 7, 2016, Met-Ed filed a motion for summary judgment seeking to have Ms. Salahuddin's complaint dismissed prior to the hearing. In its motion, Met-Ed argued, among other things, that all the issues alleged in the complaint were reviewed by the Commission in response to the first complaint and that there are no material issues in dispute.

Ms. Salahuddin did not file an answer to Met-Ed's motion. As the motion was filed one week prior to the hearing, it was not addressed prior to the hearing.

The hearing convened on September 15, 2016 as scheduled. Ms. Salahuddin appeared and provided oral testimony. Margaret Morris, Esquire, appeared on behalf of Met-Ed. Prior to the hearing, a lengthy discussion was held regarding the proper scope of the hearing in light of Met-Ed's motion for judgment on the pleadings, various orders previously issued in this case and the prior Commission decision regarding a complaint Ms. Salahuddin filed against Met-Ed on January 14, 2015 at docket number F-2015-2463441. In light of that discussion, it was determined that Ms. Salahuddin would present her testimony and a determination would be made regarding which issues Ms. Salahuddin was able to raise as part of her complaint. A further hearing would then be scheduled to allow Met-Ed to cross-examine Ms. Salahuddin and provide its response to her testimony on the issues in her complaint she is able to pursue.

The transcript of the September 15, 2016 hearing was submitted to the Commission on October 3, 2016.

Met-Ed's motion for judgment on the pleadings was denied via order dated October 14, 2016 wherein the scope of the proceeding was also clarified. As a result, a Telephonic Hearing Notice was issued establishing a further telephonic hearing for this matter for Tuesday, December 6, 2016.

The further telephonic hearing convened on December 6, 2016, as scheduled. Again, Ms. Salahuddin appeared pro se and Margaret Morris, Esquire appeared on behalf of Met-Ed. Ms. Morris presented the testimony of one witness who sponsored 15 exhibits that were admitted into the record. During the hearing, Ms. Salahuddin requested an opportunity to submit late-filed exhibits. Tr. 84-85. Ms. Salahuddin was given ten days from the date of the hearing to submit any additional exhibits and Met-Ed was given ten days from the date any additional exhibits were submitted to file any response to those exhibits. The record in this proceeding closed on December 29, 2016 when the transcript of the second hearing was submitted to the Commission.

On January 3, 2017, Ms. Salahuddin submitted several exhibits with an accompanying cover letter. As this submission was beyond the ten days Ms. Salahuddin was afforded to submit late-filed exhibits, Met-Ed was informed that the filing will be considered as a petition to reopen the record. 52 Pa.Code § 5.571. On January 17, 2017, Met-Ed filed a response to Ms. Salahuddin's petition. For the reasons discussed further below, the petition will be granted and the documents submitted by Ms. Salahuddin will be admitted into the record of this proceeding.

Section 5.571 of the Commission's regulations governs the reopening of the record prior to the issuance of a final decision. This Section provides:

**§ 5.571. Reopening prior to a final decision.**

- (a) At any time after the record is closed but before a final decision is issued, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence.
- (b) A petition to reopen must set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

52 Pa.Code §§ 5.571(a) & (b). Furthermore, the Commission's regulations provide that relevant and material evidence is admissible subject to objections on other grounds. 52 Pa.Code § 5.401(a). Such other grounds include evidence that is repetitious or cumulative and if the probative value of the evidence is outweighed by the danger of unfair prejudice, confusion of the issues or considerations of undue delay. 52 Pa.Code § 5.401(b). In general, however, the Presiding Officer has all necessary authority to control the receipt of evidence. 52 Pa.Code § 5.403(a).

In this case, Ms. Salahuddin submitted several exhibits that include various monthly bills, termination notices, Pennsylvania Customer Assistance Program (PCAP) documents and a lease agreement. Ms. Salahuddin included a description of the various

documents as part of the packet with subheadings: “statement of complaint,” “issues client disputes” and “based on these findings.” In response, Met-Ed generally opposed the admission of any late-filed exhibits into the record of this proceeding on the basis that the legal standard for granting a petition to reopen the record has not been satisfied. In the alternative, Met-Ed provided substantive responses opposing each of Ms. Salahuddin’s proposed exhibits. In light of these arguments, Ms. Salahuddin’s petition to reopen the record will be granted and the late-filed exhibits will be admitted into the record of this proceeding.

With regard to Met-Ed’s argument that the exhibits should not be admitted into the record because Ms. Salahuddin has failed to satisfy the standard for granting a petition to reopen the record, this argument will be rejected. Ms. Salahuddin did not introduce any exhibits into the record during the hearing. Yet, at the conclusion of the hearing, Ms. Salahuddin made a request to have documents admitted into the record. Tr. 84-85. In response to the request, Ms. Salahuddin was given ten days to submit any additional documents to be considered for admission in to the record and Met-Ed was given an additional ten days to provide any response to the request. Met-Ed also requested that any exhibits be accompanied by an explanation or a narrative. Tr. 86-87. Although Ms. Salahuddin did not comply with the ten-day requirement, she submitted her proposed of exhibits on January 3, 2017. As the record in this proceeding closed on December 29, 2016, when the transcript of the December 6, 2016 hearing was submitted to the Commission, Met-Ed was informed that the exhibits would be treated as a petition to reopen the record. Met-Ed then filed a response to Ms. Salahuddin’s petition on January 17, 2017.

Section 1.2 of the Commission’s regulations provides, in part, that the Commission’s regulations “shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding” and that “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.” 52 Pa.Code § 1.2(a). Initially, Ms. Salahuddin should have presented these exhibits as part of the presentation of her testimony during the first hearing. Furthermore, Ms. Salahuddin should have presented these exhibits within the ten day time-period agreed to during the second hearing. Although Ms. Salahuddin proceeds at her own

risk as a pro se complainant, in this instance, it is not unreasonable that Ms. Salahuddin would have difficulties maneuvering through the procedural issues of formal Commission proceedings. Met-Ed is correct that Ms. Salahuddin has not satisfied the legal standard articulated by the Commission to reopen the record, i.e., she has not set forth material changes of fact or of law that have occurred since the conclusion of the hearing. Nonetheless, Met-Ed has had an opportunity to provide a substantive response to Ms. Salahuddin's request and, therefore, the company's substantive rights have not been affected. As a result, Met-Ed's argument that Ms. Salahuddin's exhibits should not be admitted into the record because Ms. Salahuddin has failed to satisfy the standard for granting a petition to reopen the record will be rejected.

With regard to the particular documents that Ms. Salahuddin would like admitted into the record, pre-marked as Exhibits A thru H, again, Met-Ed's arguments that the exhibits should not be admitted will be rejected as follows:

- **Exhibits A and B**: these exhibits pertain to Ms. Salahuddin's enrollment in Met-Ed's PCAP. Ms. Salahuddin testified regarding PCAP during the hearing and Met-Ed presented exhibits that included information regarding Ms. Salahuddin's participation in PCAP. In response to Ms. Salahuddin's request, Met-Ed noted that the record demonstrates that Ms. Salahuddin was dismissed from PCAP effective May 1, 2015 for failure to re-verify the household income. The additional documents provided in Exhibits A and B provide additional information regarding Ms. Salahuddin's enrollment in PCAP and will be admitted.

- **Exhibit C and H**: these exhibits are portions of Ms. Salahuddin's monthly bills for April, 2013 and June, 2015. There is substantial record evidence regarding Ms. Salahuddin's monthly bills. This includes Met-Ed exhibits of Detailed Statements of Account that include a significant amount of similar information for additional months than what is contained in Exhibits C and H. In response to Ms. Salahuddin's request, Met-Ed provides additional explanation regarding the particular monthly bills. Again, these additional documents provided in Exhibits C and H pertain to Ms. Salahuddin's monthly bills and will be admitted.

- **Exhibits D, E, F and G**: these exhibits are three-day and ten-day shut-off notices Met-Ed served on Ms. Salahuddin, dated September 9, 2015, June 2, 2015, September 16, 2016 and one that

is undated. Similar to the monthly bills in exhibits C and H, there is substantial record evidence regarding when Ms. Salahuddin received termination notices from Met-Ed. Of note, Ms. Salahuddin also included as part of exhibit D a one page copy of a residential lease. Met-Ed expressed concerns that the lease is altered. It is clear that some portions of the writing in the blanks on lease do not match other portions of the writing. This will impact the amount of weight afforded this document when considering the ultimate issues in this proceeding. Nonetheless, as the termination notices provided to Ms. Salahuddin are discussed elsewhere in the record, these additional documents will also be admitted.

In general, each of these exhibits are relevant to the ultimate issues in this proceeding. Met-Ed objected that each of the documents should be rejected because they are not complete. It is important that the entirety of documents be admitted into the record and not select portions. Again, in light of Ms. Salahuddin appearing pro se, this error will be excused, although any such incompleteness may impact the overall weight afforded a particular exhibit.

In conclusion, Ms. Salahuddin's request for various documents to be admitted into the record of this proceeding will be granted. As discussed above, although Ms. Salahuddin should have presented these exhibits during the hearing, and has otherwise not satisfied the Commission's requirements to reopen the record, Met-Ed's substantive rights will not be impacted by the admission of these documents. Most of these documents pertain to issues that have already been raised in this proceeding and the appropriate weight will be afforded these exhibits regarding the ultimate issues in this case as part of the Initial Decision. Met-Ed's arguments in response to Ms. Salahuddin's requests will be rejected. Ms. Salahuddin's exhibits will be admitted into the record.

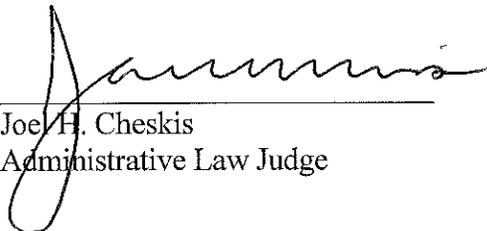
ORDER

THEREFORE,

IT IS ORDERED:

1. That the request of Zakiyyah Salahuddin for the admission of Salahuddin Exhibits A thru H in to the record of the proceeding at Docket Number C-2016-2547092 dated January 3, 2017 is hereby granted.
2. That Salahuddin Exhibits A thru H are admitted into the record.
3. That two copies of Salahuddin Exhibits A thru H will be provided to the Commission's Secretary's Bureau for inclusion in the official record.
4. That the record in this case is closed.

Date: January 27, 2017

  
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Joe H. Cheskis  
Administrative Law Judge

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ZAKKIYAH SALAHUDDIN  
PO BOX 1303  
EASTON PA 18044-1303  
646.650.8077

MARGARET A MORRIS ESQUIRE  
REGER RIZZO & DARNALL  
2929 ARCH STREET 13TH FLOOR  
PHILADELPHIA PA 19104  
215.495.6524  
ACCEPTS E SERVICE