

May 5, 2017

**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  
Motion to Dismiss of Met-Ed**

Dear Secretary Chiavetta:

Pursuant to the Amended Fourth Prehearing Order issued on April 17, 2017, by the Hon. Dennis J. Buckley, attached for filing is the Motion to Dismiss the Formal Complaint of Craig Jackson (Complainant).

A copy of the Motion 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: The Hon. Dennis J. Buckley, PA Public Utility Commission [w/enc.]  
Tori Giesler, Esquire, FirstEnergy Service Company [w/enc.]  
Craig Jackson [w/enc.]

**Re: Docket No. C-2016-2565262  
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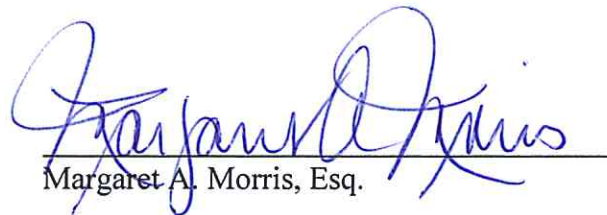
**CERTIFICATE OF SERVICE**

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 52 Pa. Code § 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](mailto:Craig.Jackson@xaviermanors.com)

Dated: May 5, 2017

  
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 § 5.102, you are hereby notified that if you do not file a written response to the enclosed Motion to Dismiss of Metropolitan Edison Company, within twenty (20) days from service of this Notice, the facts set forth by Metropolitan Edison Company in the Motion to Dismiss may be granted. All pleadings, such as a Reply to the Motion to Dismiss, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Metropolitan Edison Company and Administrative Law Judge Dennis J. Buckley.

**File with:**


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

The Hon. Dennis J. Buckley  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, 2 West  
P.O. Box 3265  
Harrisburg, PA 17105

**With a copy to:**

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

Date: May 5, 2017



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Counsel for Metropolitan Edison Company

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CRAIG JACKSON	:	
	:	
v.	:	Docket No. C-2016-2565262
	:	
METROPOLITAN EDISON COMPANY	:	

**MOTION OF METROPOLITAN EDISON COMPANY  
TO DISMISS THE COMPLAINT OF CRAIG JACKSON**

Metropolitan Edison Company (Met-Ed or Respondent), by and through its attorneys, Reger Rizzo & Darnall LLP, and pursuant to 52 Pa. Code §§ 5.103, hereby moves the Honorable Dennis J. Buckley (Judge Buckley) of the Pennsylvania Public Utility Commission (Commission) for an order dismissing the Formal Complaint (Complaint) of Craig Jackson (Complainant) against Met-Ed, in the above captioned proceeding, for failure to comply with the Second Prehearing Order Granting in Part and Denying in Part Preliminary Objections and Providing Additional Prehearing Guidance (2<sup>nd</sup> PHO) and to respond to Met-Ed’s Discovery as directed by Corrected Third Prehearing Order (3<sup>rd</sup> PHO). As Complainant has evidenced no good faith effort to pursue his Complaint by failing to comply with two Orders issued by Judge Buckley and failure to comply with Commission regulations regarding discovery, Met-Ed respectfully requests that the Complaint be dismissed with prejudice.

In support thereof, Met-Ed avers as follows:

**I. Relevant Procedural History and Timeline**

1. On August 28, 2016, the Complainant filed his Complaint alleging that Met-Ed had not provided reasonable service in a dispute concerning vegetation management on his

property. Specifically, the Complainant alleged that Met-Ed had engaged in racial profiling and harassment.

2. On September 26, 2016, Met-Ed filed an Answer and New Matter denying any violation of the Pennsylvania Public Utility Code (Code) or rules and regulations of the Commission. The Respondent simultaneously filed a Preliminary Objection (PO) requesting that portion of the Complaint seeking damages be dismissed.

3. The Complainant filed a Response to the PO on October 4, 2016 stating, “[d]uring the case hearing, I shall prevent [sic] a concise case depicting Met-Ed’s harassment and discriminatory policy by the Forestation personnel. Pictures don’t lie.”

4. On October 12, 2016, the Complainant filed a Response to the Answer and New Matter stating “there is concrete evidence advocated [sic] this in my original dispute” and “I will present a picture of this tree to the Public Utility Commission at the hearing which will refute all of Met-Ed’s erroneous theories.”

5. On December 19, 2016, a Telephonic Hearing Notice was issued scheduling a telephonic hearing for January 7, 2017.

6. On January 7, 2017, the hearing was converted to an informal prehearing conference. The Telephonic Hearing was rescheduled for April 18, 2017.

7. On January 9, 2017, the 2<sup>nd</sup> PHO was issued directing that “the Complaint must amend and augment his original Complaint with a written filing with the Secretary of the Commission stating, with specificity, what properties were affected by Met-Ed’s alleged conduct. Complainant is encouraged to supply any additional relevant factual statements in the amended Complaint that will allow the presiding officer and the Commission to understand the case and for Met-Ed to present its defense.” (Emphasis in Original).

8. The Complainant did not file an amended complaint.

9. On March 21, 2017, Met-Ed served Interrogatories and Requests for Documents (Discovery) on the Complainant with the requisite notice advising the Complainant that objections were due on March 31, 2017 and answers due April 10, 2017.<sup>1</sup>

10. The Complainant did not file objections and has not provided the responses to the Discovery.

11. On April 11, 2017, the 3<sup>rd</sup> PHO was issued advising that a Telephonic Prehearing Conference for the resolution of outstanding discovery issues was scheduled for April 13, 2017. The 3<sup>rd</sup> PHO specifically advised the Complainant of the potential sanctions for failure to cooperate with discovery requests and for failure to comply with an order of a presiding officer. Judge Buckley specifically noted that the amended Complaint had not been filed in violation of the 2<sup>nd</sup> PHO and stated “it is my expectation that any outstanding discovery issues and compliance with [2<sup>nd</sup> PHO] will be promptly resolved.”

12. The Prehearing Conference was held on April 13, 2017. At that Prehearing Conference, Met-Ed made an oral Motion to Dismiss based on the Complainant’s position that he did not intend to respond to the Discovery because it was “irrelevant” and “Met-Ed already had the answers.” Judge Buckley directed Met-Ed to file a written Motion to Dismiss by April 28, 2017.

13. On April 14, 2017, Met-Ed requested an extension until May 5, 2017 to file the motion because its counsel was in a car accident after leaving the April 13, 2017 Prehearing Conference. Complainant opposed the requested stating in an email that he “. . . will not have time in May.”

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<sup>1</sup> The Cover letter and Certificate of Service was e-filed with the Commission.

14. On April 17, 2017, the Amended Fourth Prehearing Order (4<sup>th</sup> PHO) was issued granting Met-Ed's extension. Judge Buckley noted the Complainant's position that he will not respond to Met-Ed's Discovery and provided no explanation for his failure to comply with the 2<sup>nd</sup> PHO.

## II. Legal Standard

15. Section 5.321(c) of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code §5.321(c), specifically provides that "a participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Discovery is permitted regardless of whether the information sought "relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant." *Id.* Information may be discoverable, even if it would be inadmissible at a hearing. "It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." *Id.*

16. The Commission has issued a number of decisions interpreting the scope of its discovery rules. Consistently, the Commission has allowed participants wide latitude in discovery matters. *Pa. P.U.C. v. The Peoples Natural Gas Company*, 62 Pa. P.U.C. 56 (August 26, 1986); *Pa. P.U.C. v. Equitable Gas Company*, 61 Pa. P.U.C. 468 (May 16, 1986).

17. Sections 5.371 and 5.372 govern sanctions for failure to comply with the Commission's discovery regulations. Those sections read as follows:

### **5.371. Sanctions—general.**

- (a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:

- (1) A party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter.
  - (2) A party deponent or an officer or managing agent of a party refuses to obey or induces another to refuse to obey an order of a presiding officer respecting discovery, or induces another not to appear.
- (b) A motion for sanctions may be answered within 5 days of service or, in the alternative, the motion may be answered orally at a hearing if a timely hearing has been scheduled within the same 5-day period.
  - (c) The presiding officer will rule on the motion as soon as practicable. The motion should be decided within 20 days of its presentation.
  - (d) A failure to act described in subsection (a) may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order.

**§ 5.372. Sanctions—types.**

- (a) The presiding officer, when acting under § 5.371 (relating to sanctions—general) may make one of the following:
  - (1) An order that the matters regarding which the questions were asked, the character or description of the thing or land, the contents of the paper, or other designated fact shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.
  - (2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony.
  - (3) An order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, or entering a judgment against the disobedient party or individual advising the disobedience.

18. Section 332(f) of the Code, provides in pertinent part:

If the actions of a party or counsel in a proceeding shall be determined by the commission, after due notice and opportunity for hearing, to be obstructive to the orderly conduct of the proceeding and inimical to the public interest, the commission may reject or dismiss any rule or order in any manner proposed by the offending party or counsel.

66 PaC.S.A. § 332(f).

### III. Argument

#### 1. Failure to comply with two Orders issued by Judge Buckley.

19. It is well established that the party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa. C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of PA*, 72 Pa PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Lansberry, Inc. v. Pa. Publ. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth.1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

20. The formal complaint must set forth “the act or thing done or omitted to be done” by a public utility “in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa. C.S. § 701; 52 Pa. Code § 5.22(a)(4). The Commission's regulations require that a complaint contain a clear statement of the relief sought. 52 Pa. Code § 5.22(a)(5).

21. The Commission as an administrative agency is required to provide due process to the parties appearing before them. Providing the parties notice and the opportunity to appear and be heard satisfies the due process requirement. *Schneider v. Pa. P.U.C.*, 479 A.2d 10 (Pa. Cmwlth. 1984).

22. In the present proceeding, the Complainant has the burden of proof to show that Met-Ed has in some manner violated the provisions of the Code or the regulations of the Commission regarding the vegetation maintenance performed at his property. 66 Pa. C.S. § 332(a).

23. In the 2<sup>nd</sup> PHO, Judge Buckley found that the Complaint did not conform to 52 Pa. Code § 5.22(a)(5) and did not provide a clear statement of the allegations against Met-Ed. He required the Complaint to file an amended complaint noting that Met-Ed has a right to “know what allegations it is defending itself against” noting Met-Ed’s due process rights.

24. Since the Complainant failed to comply with these standards, Met-Ed does not know what allegations it is defending itself against which is a clear denial of due process of law.

25. In the 3<sup>rd</sup> PHO, Judge Buckley provided notice to the Complainant of the potential sanctions for failure to comply with his Orders. The consequences of such a failure were clearly spelled out.

26. The Complainant did not comply with Judge Buckley’s 2<sup>nd</sup> PHO nor did he offer any explanation at the April 13, 2017 Prehearing Conference for his failure to comply.

27. A presiding officer's orders must be complied with, and a lack of compliance presents a sufficient basis to dismiss a complaint. *Treffinger v. PPL Electric Utilities Corp.*, Docket No. C-20027978 (Order entered March 3, 2003); *Snyderville Community Development Corp. v. PGW*, Docket No. C-20055032 (Order entered July 31, 2006); *Application of Black Diamond Cab Co.*, Docket No. A-00122566 (Order entered December 1, 1966).

28. The Complainant was afforded every opportunity to amend his Complaint so as to make clear the legal basis for the Complaint but choose not to do so.

29. Commission precedent is well settled and supports dismissal of the Complaint with prejudice for failure to comply with Judge Buckley's two orders. *Weisenberger, et al v PECO*, Docket No. C-2010-2182281, (Final Order entered December 22, 2011).

**2. Failure to respond to discovery requests.**

30. Due to the Complainant's failure to comply with the 2<sup>nd</sup> PHO and the lack of specificity of the allegations, Met-Ed timely propounded Discovery seeking specific information/clarification of the issues being alleged and requesting documents that the Complainant referenced in his Response to PO and Response to New Matter that were in his possession.

31. The Complainant failed to object to the Discovery or respond to said requests. In fact, the Complainant specifically advised Judge Buckley that he was not going to respond and would explain his position at the hearing.

32. Due process requires that Met-Ed be advised of the allegations so that it can prepare and defend its actions at hearing. *Schneider, supra*.

33. The Complainant has prevented the Respondent from preparing for the hearing and presenting a defense.

34. 52 Pa. Code § 5.371(a) authorizes the presiding officer to issue an order when a party fails to respond to discovery requests.

35. 52 Pa. Code § 5.372(a)(3) provides that a judgment can be entered against the disobedient party.

36. Granting the Respondent's Motion to Dismiss is in the public interest. Dismissing the Complaint will prevent the Commission from wasting time, energy, and money scheduling and convening a hearing or otherwise expending further Commission resources on this case.

37. Commission precedent supports dismissal of the Complaint with prejudice for his refusal to respond to properly propounded Discovery. See, *Application of Santos E. Pineda*, Docket No. A-2009-2126367 (Final Order entered June 21, 2010).

38. Dismissal of the Complaint is appropriate given the Complainant's position that he will not respond to the Discovery

#### **IV. Conclusion**

The Complainant has refused to articulate a clear and concise statement of the allegations against Met-Ed. Due process requires that the Respondent be advised of the allegations before hearing so it can prepare for and present a defense at hearing. The Complainant's utter refusal to respond to Discovery and his refusal, without any explanation, to comply with two of Judge Buckley's Orders supports dismissal of the Complaint without a hearing pursuant to 52 Pa. Code § 5.372(a) (3).

**WHEREFORE**, Respondent, Metropolitan Edison Company, requests that the Honorable Dennis J. Buckley grant this Motion to Dismiss the Complaint of Craig Jackson with prejudice.

Respectfully submitted,

Dated: May 5, 2017



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