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June 19, 2017

Via Hand Delivery

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

Re: MBPR Partnership, LP v. Metropolitan Edison Company
Docket No. C-2017-2603201

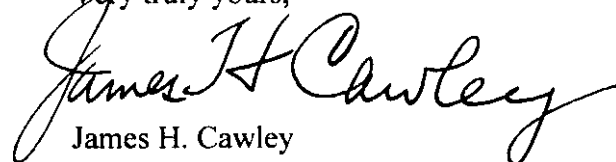
Dear Secretary Chiavetta:

Enclosed please find MBPR Partnership, LP's Reply to New Matter of Metropolitan Edison Company in the above-captioned matter.

Also please find my Notice of Appearance in this matter.

If you have any questions, please contact me.

Very truly yours,


James H. Cawley

C: Via E-Mail and U.S. First Class Mail:
Tori Giesler, Esquire

dwelling unit from being deemed “individually metered” under Section 1529.1). *See* Complaint ¶¶ 5.A.1 (first bullet) at page 2; 5.A.4 at page 3; 5.C.7 at page 10; 5.C.17(g)(2) at page 25; 5.C.17(g)(4) at page 26; 5.C.17(g)(7)(ii) at page 27; and 5.D.3(a) at page 30.

9. Admitted, although as noted in the previous paragraph, the corrective date was December 6, 2016.

10. Admitted in part; denied in part. It is admitted that Complainant did not notify Met-Ed that Tenant’s residential unit was not “individually metered” because it was (and is) individually metered which is the only way Tenant could have had her own account with Met-Ed. It is denied that Complainant was required to do so (*see* Complaint ¶¶ 5.A.4 at page 3 and 5.C.13 at page 12) and strict proof of the same is demanded at hearing.

11. Admitted. *See* Complaint ¶ 5.A.3 at page 3.

12. Admitted.

13. Admitted. *See* Complaint ¶ 5.A.5 at page 3.

14. Admitted in part; denied in part. It is admitted that Complainant had an electrician on December 6, 2016, rewire Tenant’s meter so as to remove the wiring for the adjacent office’s five wall outlets from registering usage on Tenant’s meter, that on December 13, 2016, Met-Ed verified that the correction had been made, and that Met-Ed transferred the account from MBPR Partnership, LP back to Tenant’s name. It is denied that Met-Ed properly and lawfully transferred the account back to Tenant’s name because the account was transferred with a zero balance and did not include the Tenant’s payment arrearage amounts nor charges for usage from October 25, 2016 to December 13, 2016. *See* Complaint ¶ 5.A.8 at page 4.

15. This paragraph contains a legal conclusion to which no response is required. To the extent a response is required, the Complaint is replete with reasons why this legal conclusion is in error, which reasons speak for themselves. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraph 37 below with the same force and effect as if fully set forth herein.

16. This paragraph contains a legal conclusion to which no response is required. To the extent a response is required, the Complaint is replete with reasons why this legal conclusion is in error, which reasons speak for themselves. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraph 37 below with the same force and effect as if fully set forth herein.

17. Denied as stated. Section 1529.1 speaks in terms of notice to the public utility, not determination of usage. It is denied that such landlords must “determine whether the usage from one or more of the residential dwellings is individually metered.” Rather, the landlord must give notice to the public utility if the residential building “contains one or more dwelling units, not individually metered.”

18. This paragraph contains a legal conclusion to which no response is required. To the extent a response is required, Section 1529.1 speaks for itself, and subsection (a) thereof cannot be read in isolation but must be interpreted along with subsections (b) and (c). *See* Complaint ¶ 5.C.2 at page 6. Further, Complainant had no duty to notify Met-Ed in this instance because Tenant’s dwelling unit was “individually metered” (and Tenant's usage was billed to Tenant's separate account with Met-Ed; Met-Ed therefore was already on notice of the existence of a residential dwelling unit in the building and did not require notice of that fact from the Owner). Consequently, the building did not

“contain[] one or more dwelling units, not individually metered,” and Owner had no obligation to notify Met-Ed of the existence of an unmetered dwelling unit in the building because none existed. *See* Complaint ¶ 5.C.13 at page 12.

19. This paragraph contains a legal conclusion to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraph 18 above with the same force and effect as if fully set forth herein.

20. This paragraph contains a legal conclusion to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraph 18 above with the same force and effect as if fully set forth herein.

21. This paragraph contains a legal conclusion to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraph 18 above with the same force and effect as if fully set forth herein.

22. This paragraph contains a legal conclusion to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraph 18 above with the same force and effect as if fully set forth herein.

23. This paragraph contains a legal conclusion to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraph 18 above with the same force and effect as if fully set forth herein.

24. This paragraph contains a legal conclusion to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraph 18 above with the same force and effect as if fully set forth herein. It is denied that *I-A Realty v. Pa. Pub. Util. Comm'n*, 63 A.3d 480 (Pa. Cmwlth. 2013), was correctly decided. To the contrary, the Court in that decision wrongly gave complete deference to the Commission's holding that the presence of "foreign load" on a leased dwelling unit's meter prevents that dwelling unit from being deemed "individually metered" under Section 1529.1. The Court instead should have found this interpretation of Section 1529.1 to be clear error under its standard of review. See Complaint ¶ 5.C.15(a) at page 14.

25. This paragraph contains a legal conclusion to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraph 18 above with the same force and effect as if fully set forth herein.

26. This paragraph contains a legal conclusion to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraph 18 above with the same force and effect as if fully set forth herein.

27. This paragraph contains a legal conclusion to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraph 18 above with the same force and effect as if fully set forth herein.

28. This paragraph contains a legal conclusion to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraph 18 above with the same force and effect as if fully set forth herein.

29. Denied. Owner had no such obligation. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraph 18 above with the same force and effect as if fully set forth herein.

30. This paragraph contains legal conclusions to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraphs 18 and 24 above with the same force and effect as if fully set forth herein.

31. This paragraph contains legal conclusions to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraphs 18 and 24 above with the same force and effect as if fully set forth herein.

32. This paragraph contains legal conclusions to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraphs 18 and 24 above with the same force and effect as if fully set forth herein.

(a) Replying further, placing responsibility for a tenant's entire account, including arrearages, on the property owner in such a circumstance is a Commission creation out of whole cloth without basis in Section 1529.1 and therefore unlawful and unconstitutional, as the Complaint throughout took pains to explain. By way of further

reply, Complainant repeats and realleges each and every allegation contained in paragraphs 18 and 24 above with the same force and effect as if fully set forth herein.

(b) Replying further, see Complaint ¶ 5.D at page 29 alleging and supporting the unconstitutionality of the Commission's interpretation of Section 1529.1.

33. Admitted. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraph 18 above with the same force and effect as if fully set forth herein.

34. This paragraph contains a legal conclusion to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraphs 18 and 24 above with the same force and effect as if fully set forth herein.

35. This paragraph contains a legal conclusion to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraphs 18 and 24 above with the same force and effect as if fully set forth herein. To the extent a response is required, Section 1529.1 speaks for itself and deals with "individually metered" and "not individually metered" leased dwelling units, and it is therefore denied that Complainant's claims and arguments regarding the statute's application are irrelevant or beyond the scope and facts of the Complaint.

36. This paragraph contains a legal conclusion to which no response is required. By way of further reply, Complainant repeats and realleges each and every allegation contained in paragraphs 18 and 24 above with the same force and effect as if fully set forth herein. It is further denied that the amount in dispute is \$3,599.70, but instead is \$4,093.59.

37. This paragraph contains a legal conclusion to which no response is required.

(a) By way of further reply, 66 Pa.C.S. § 701 speaks for itself.

(b) To the extent that a response is required, it is denied that Complainant failed to allege that Met-Ed violated the Public Utility Code, Commission regulation or order, or Met-Ed's Commission-approved tariff. On the contrary, the Complaint clearly alleges that Met-Ed violated Section 1529.1 of the Public Utility Code, which the Commission has jurisdiction to administer. *See, e.g.*, Complaint ¶¶ 5.A.4 at page 3; 5.C.13 at page 12; 5.C.17(g)((2)&(6)-(7) at pages 25-27; and 5.D.3-4 at pages 30-31.

(c) Replying further, the gravamen of Met-Ed's Answer is that it did not violate Section 1529.1 because it followed existing Commission precedent. Of necessity, then, Complainant was required to aver why the Commission's prior decisions interpreting Section 1529.1 are erroneous, which the Complaint does throughout, with reference, directly and by obvious implication, to Met-Ed's proximate actions with regard to Complainant.

(d) Replying further, Pennsylvania is a fact-pleading state, *McShea v. City of Philadelphia*, 995 A.2d 334, 339 (Pa. 2010), a standard that requires more detail than the notice pleading standard of the federal courts. A plaintiff must concisely plead all material facts it must eventually prove to recover on its causes of action. The averments of fact must be sufficiently specific to enable the adverse party to prepare a defense. Pa. R.Civ.P. 1019; *Feigley v. Dep't of Corrections*, 872 A.2d 189, 196 (Pa. Cmwlth. 2005); *Commonwealth ex rel. Pappert v. TAP Pharm. Prods., Inc.*, 868 A.2d 624, 635 (Pa. Cmwlth. 2005). Complainant's 30-page complaint, uncommon in its detailed recitation of the factual and legal aspects of this case, more than satisfies Pennsylvania's pleading

standard. Complainant denies any suggestion that Complainant's averments of fact were insufficiently specific so as to disable Met-Ed from preparing a defense.

(e) Replying further, in Pennsylvania it is perfectly proper to make claims and other legal contentions that are warranted by existing law *or that are nonfrivolous arguments for the extension, modification or reversal of existing law or the establishment of new law*. Section 1.35(c)(1)(iii) of the Commission's Rules of Administrative Practice and Procedure regarding the effect of executing a pleading makes clear that a complaint may challenge existing law or Commission precedent. 52 Pa. Code § 1.35(c)(1)(iii) ("The signature of the individual signing a document filed with the Commission constitutes a certificate by the individual that: ... (iii) The document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, to the best of the individual's knowledge, information and belief formed after reasonable inquiry.").

(f) Replying further, Met-Ed itself has previously argued that "[i]t is well-settled under Pennsylvania law that the Commission is not bound by the rule of *stare decisis* and therefore prior Commission Orders have no preclusive effect on the Commission from taking action on a previously addressed matter. *See, e.g., Bell Atlantic-Pennsylvania, Inc. v. Pa. Pub. Util. Comm'n*, 672 A.2d 352, 354 (Pa. 1995). Rather, the Commission's obligation is to render consistent decisions, and the Commission can comply with this judicial mandate by overruling or distinguishing precedents inconsistent with new decisions. *See id.* Consistent with the foregoing precedent, the Commission is free to rule upon the RESA/FES proposal based upon the new factual matrix in this proceeding." Exception of Metropolitan Edison Company,

Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Recommended Decision of Administrative Law Judge Susan D. Colwell, *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket No. P-2013-2391368 et al. at 5-6 (May 27, 2014). The Commission's Opinion and Order accepted this argument. 2014 WL 3763979 (Pa.P.U.C., July 24, 2014) at *31 ("We acknowledge that, while we are not bound by the rule of *stare decisis*, we must render consistent opinions and should either follow, distinguish, or overrule our precedent."). *See also* Complaint ¶ 5.C.15(b) at page 15.

38. Complainant repeats and realleges each and every allegation contained in paragraph 37 above with the same force and effect as if fully set forth herein.

39. Complainant repeats and realleges each and every allegation contained in paragraph 37 above with the same force and effect as if fully set forth herein.

40. Denied for the reasons stated in Complaint ¶ 5.C.17 at pages 20-24.

41. Complainant repeats and realleges each and every allegation contained in paragraph 40 above with the same force and effect as if fully set forth herein.

42. Admitted.

43. Admitted and denied. It is admitted that the Commission has such authority, but it is denied that it has interpreted and applied Section 1529.1 lawfully and constitutionally. For the reasons stated in the Complaint, the Commission has committed clear error by misinterpreting Section 1529.1 in *Ace Check Cashing v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (order entered May 21, 2010) and its progeny, and by unconstitutionally applying Section 1529.1.

44. Admitted. By way of further reply, the proceeding at that point being nonadversarial, Michael Brenner was permitted to do so by Section 1.21(c)(1) of the Commission's Rules of Administrative Practice and Procedure. 52 Pa. Code § 1.21(c)(1).
45. Admitted.
46. Admitted.
47. Admitted.
48. Admitted, but now rendered moot by the entry of appearance of the undersigned counsel coincident with the filing of this Reply to New Matter.
49. Admitted, but now rendered moot by the entry of appearance of the undersigned counsel coincident with the filing of this Reply to New Matter.
50. Admitted, but now rendered moot by the entry of appearance of the undersigned counsel coincident with the filing of this Reply to New Matter.
51. Admitted, but now rendered moot by the entry of appearance of the undersigned counsel coincident with the filing of this Reply to New Matter.
52. Admitted, but now rendered moot by the entry of appearance of the undersigned counsel coincident with the filing of this Reply to New Matter.
53. Admitted, but now rendered moot by the entry of appearance of the undersigned counsel coincident with the filing of this Reply to New Matter.
54. Admitted as of the date of Met-Ed's filing of an Answer.
55. Admitted, but now rendered moot by the entry of appearance of the undersigned counsel coincident with the filing of this Reply to New Matter.
56. Denied, but now rendered moot by the entry of appearance of the undersigned counsel coincident with the filing of this Reply to New Matter.

WHEREFORE, for the foregoing reasons, MBPR Partnership, LP respectfully requests that the Commission dismiss Metropolitan Edison Company's New Matter and grant such other relief as it deems appropriate.

Respectfully submitted,



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Counsel for MBPR Partnership, LP

Dated: June 19, 2017

