

# SkarlatosZonarich LLC

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James H. Cawley, Esquire  
[jcawley@skarlatoszonarich.com](mailto:jcawley@skarlatoszonarich.com)

August 10, 2017

Via Hand Delivery

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

**Re: MBPR Partnership, LP v. Metropolitan Edison Company,  
PaPUC Docket No. C-2017-2603201  
MOTION TO JOIN AN INDISPENSABLE PARTY**

Dear Secretary Chiavetta:

Enclosed for filing are an original and three copies of Complainant's Motion to Join an Indispensable Party (Valerie Romey, the sole residential tenant affected), and the cover letter sent to Ms. Romey with copies of pertinent documents thus far filed in this case.

Please call me if you have any questions about these filings.

Sincerely,

For SkarlatosZonarich LLC



James H. Cawley

C: Per Certificate of Service

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August 10, 2017

www.skarlatoszonarich.com

James H. Cawley, Esquire  
jcauley@skarlatoszonarich.com

Via First Class Priority Mail CERTIFIED

Valerie Romey  
1003 North George Street  
Second Floor Front  
York, PA 17404

Re: **MBPR Partnership, LP v. Metropolitan Edison Company,**  
**PaPUC Docket No. C-2017-2603201**  
**MOTION TO JOIN AN INDISPENSABLE PARTY & NOTICE TO PLEAD**

Dear Ms. Romey:

Enclosed is a Motion to Join an Indispensable Party (you) in the above-captioned matter pending before the Pennsylvania Public Utility Commission.

The purpose of the Motion is to ensure that you receive due process of law—notice of the pending proceeding and an opportunity to protect your interests in this case.

Please read the Notice to Plead carefully. It explains the nature of the case and your opportunity to respond to the Motion. The Motion may or may not be granted by the Administrative Law Judge who has been assigned to hear the case.

The initial telephonic hearing scheduled for August 3 was cancelled awaiting preparation of a Joint Stipulation of Facts by counsel for MBPR Partnership, LP and Met-Ed.

Also enclosed are copies of the Formal Complaint filed by MBPR Partnership, LP against Met-Ed; Met-Ed's Answer and New Matter; MBPR Partnership, LP's Reply to the New Matter; and the Prehearing Order of the Administrative Law Judge.

Sincerely,

For SkarlatosZonarich LLC



James H. Cawley

**BEFORE THE**  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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MBPR Partnership, LP

v.

Metropolitan Edison Company

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Docket No. C-2017-2603201

**NOTICE TO PLEAD**

TO: Valerie Romey  
1003 North George Street  
Second Floor Front  
York, PA 17404

Pursuant to Pennsylvania Public Utility Commission Rule of Administrative Practice and Procedure § 5.103 (relating to motions), 52 Pa. Code § 5.103, you are hereby notified **that you have twenty (20) days from the date you receive the attached Motion to Join an Indispensable Party to agree or object to (or otherwise answer) the Motion's request to make you a formal party in the above-captioned proceeding by filing a written response with the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17120.**

If you fail to file a written response to the Motion within twenty (20) days from your receipt of the attached Motion, it may be granted without further notice to you.

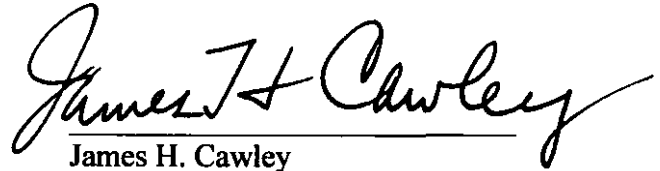
The attached Motion requests that you be joined as an indispensable party in the above-captioned proceeding in which MBPR Partnership, LP ("Complainant") seeks to be relieved of the responsibility (restoring it to you) of paying your Metropolitan Edison Company ("Met-Ed") electric service account balance of \$3,748.09 as of October 25, 2016 (which Met-Ed transferred to MBPR Partnership, LP for payment on November 18, 2016) because of the existence of "foreign" electricity load on your meter (that is, electric usage from five wall outlets in a commercial office in your building was registering on your meter). Part C of the Requested Relief on page 33 of the enclosed Formal Complaint requests that the Public Utility Commission:

- C. Relieve Complainant of responsibility for payment of Tenant's account balance, including arrearages, which is a just debt owed by Tenant to Met-Ed, after deducting therefrom and making Complainant responsible for payment of the foreign load usage on Tenant's meter from the beginning of her tenancy on April 17, 2014, until removal of the foreign load was verified by Met-Ed on December 13, 2016.

A copy of Met-Ed's Answer and New Matter to Complainant's Formal Complaint is also enclosed for your information.

As a formal party to the proceeding, you may represent yourself or you may be represented at your expense by an attorney-at-law of your choosing.

If you have any questions about this Notice, you may call the Secretary of the Pennsylvania Public Utility Commission at (717) 772-7777.



James H. Cawley  
Pa. Attorney I.D. No. 6896  
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Counsel for MBPR Partnership, LP

Dated: August 10, 2017

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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MBPR Partnership, LP

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v.

Docket No. C-2017-2603201

Metropolitan Edison Company

**MOTION TO JOIN AN INDISPENSABLE PARTY**

Pursuant to 52 Pa. Code § 5.103 (relating to motions), MBPR Partnership, LP ("Complainant"), by its attorney, moves that Valerie Romey be joined in the above-captioned matter as an indispensable party. In support of this motion, Complainant avers as follows:

1. On April 28, 2017, the Complainant, MBPR Partnership, LP, filed a Formal Complaint against Metropolitan Edison Company ("Met-Ed") in the above-captioned matter disputing the transfer of charges, pursuant to Section 1529.1 of the Public Utility Code, 66 Pa.C.S. § 1529.1, for electricity service rendered to 1003 North George Street, Second Floor Front, York, PA, to Complainant's account upon the discovery of "foreign load" on the meter serving the dwelling unit at that address of Valerie Romey ("Tenant"), the sole residential tenant in the building.

2. Complainant seeks to be relieved of the responsibility of paying Tenant's Metropolitan Edison Company ("Met-Ed") electric service account balance of \$3,748.09 as of October 25, 2016 (which Met-Ed transferred to Complainant for payment on November 18, 2016). Part C of the Requested Relief on page 33 of the Formal Complaint requests that the Public Utility Commission:

C. Relieve Complainant of responsibility for payment of Tenant's account balance, including arrearages, which is

a just debt owed by Tenant to Met-Ed, after deducting therefrom and making Complainant responsible for payment of the foreign load usage on Tenant's meter from the beginning of her tenancy on April 17, 2014, until removal of the foreign load was verified by Met-Ed on December 13, 2016.

3. The Commission served Met-Ed with the Formal Complaint on May 9, 2017, to which Met-Ed filed an Answer and New Matter on May 30, 2017.

4. On June 19, 2017, Complainant filed a Reply to New Matter of Metropolitan Edison Company.

5. On June 26, 2017, a Call-in Telephonic Hearing Notice was issued, scheduling this matter for an initial telephonic hearing on Thursday, August 3, 2017, and on the same day a Prehearing Order was issued by Administrative Law Judge Mary D. Long.

6. On July 23, 2017, counsel for Complainant notified ALJ Long that he and counsel for Met-Ed were working toward a stipulation of the facts with the intention of obviating the need for an evidentiary hearing. Consequently, on July 24, 2017, ALJ Long acknowledged counsel's email, directed the cancellation of the August 3, 2017 telephonic hearing (which cancellation was issued that same day), and further directed counsel for the parties to keep her apprised of their progress in preparing a Stipulation of Facts.

7. In *Ace Check Cashing, Inc. v. Philadelphia Gas Works and Eddie and Jennifer West, Indispensable Parties*, Docket No. C-2008-2056428 (Order entered May 21, 2010), the presently controlling precedent, the Commission stated (at slip op. pages 4-5):

The intricacies of this case bring to the forefront two problems with the Commission's current foreign load policy: (1) the Commission's lack of jurisdiction over private disputes between non-utility parties; and (2) the

lack of due process protection afforded to tenants who are joined as indispensable [sic] parties in this type of proceeding.

First, the Commission does not have subject matter jurisdiction over a financial dispute between two non-utility parties. In *Afshari*, the Commission recognized that a dispute involving foreign load is not between the property owner and the utility, but is one between the tenant and the property owner. Even so, the Commission still chose to exercise its jurisdiction over the dispute. While the Commission has jurisdiction over the regulation of utility companies and utility service, the Commission does not have jurisdiction to adjudicate every dispute that involves a utility, e.g., personal injury case, discrimination case, etc., and does not have the authority to settle disputes on every contract to which a public utility is a party. Accordingly, the Commission does not have subject matter jurisdiction over a dispute between a property owner and a tenant -- two non-utility parties. While such a dispute, arguably, may involve utility rates, when the charges owed to the utility for past service are settled, the only issue to be decided is financial responsibility for the charges. That matter should be handled by the courts.

Second, the procedure set forth in *Afshari* to gain personal jurisdiction over the tenant is problematic. By joining the tenant as an indispensable party to the property owner's complaint proceeding, questions are raised with regard to the tenant's due process rights. When a complaint is filed against a utility, the utility has an opportunity to challenge the complaint in its answer or in its preliminary motions. When a petition for joinder is served, the tenant is given a copy of the complaint against the utility and any applicable pleadings. Nowhere in any of these documents is there a recitation of the allegations made *against the tenants* that would apprise them that a determination about their financial liability for utility charges would be rendered in this Commission proceeding. After all, the complaint that was served on the tenants was filed against the utility and not against them.

Additionally, the tenant should also be given an opportunity to challenge the petition before the order granting joinder is issued. In this case, no such opportunity was given [because the Administrative Law Judge granted a motion for joinder before the expiration of the period for a reply by the tenants to the motion].

8. Because of the Commission's contradictory holding that it did not have subject matter jurisdiction over landlords and tenants in foreign load disputes, yet to satisfy due process concerns tenants should be given an adequate opportunity to respond

to a motion for their joinder in such disputes (and presumably to be permitted to participate in such proceedings), Complainant did not include Tenant as a co-respondent in its Formal Complaint.

9. Upon reflection, Complainant now seeks to join Tenant as an indispensable party because, if Complainant prevails in this matter, Tenant may be held responsible for some or all of the disputed amount. Absent a grant of this motion, that result adversely affecting Tenant will have been reached without providing her notice and an opportunity to be heard (exactly the result that concerned the Commission in *Ace Check Cashing*).

10. If Complainant does not prevail before the Commission based on the Commission's lack of subject matter jurisdiction, it will be forced to resort to a civil court where Tenant will be required to defend herself and possibly again at the Commission if the civil court concludes that it lacks subject matter jurisdiction because:

(a) Complainant's obligation to pay Tenant's electric utility account balance arises under Section 1529.1 of the Public Utility Code, not under the lease agreement which provides that Tenant shall hold Complainant harmless "from any and all loss, damage, cost or expense, and actions that may arise on or with respect to the premises subject to this lease whether the same be of a contractual, tortuous, or any other cause";

(b) the hold harmless lease provision cannot control because it would act as a waiver of Complainant's responsibility to pay for utility service under Public Utility Code § 1529.1(b), and Section 1530 the Code provides that any waiver of a tenant's rights is void and unenforceable;

(c) any agreement that violates a provision of a statute or which cannot be performed without a violation of such provision is illegal and void, *Dippel v. Brunozzi*, 365 Pa. 264, 267, 74 A.2d 112, 114 (1950); and therefore

(d) Complainant has a full, complete, and adequate remedy before the Public Utility Commission which has exclusive jurisdiction to resolve matters arising under the Public Utility Code.

11. Likewise, if the court concludes that it has subject matter jurisdiction, it may still conclude that the doctrine of primary jurisdiction requires judicial abstention where the integrity of the interrelated scheme provided in Chapter 15 of the Public Utility Code, of which Section 1529.1 is a part, dictates preliminary resort to the Commission which administers that scheme, thus promoting consistency and uniformity in administrative policy. *See Elkin v. Bell Telephone Company of Pennsylvania*, 491 Pa. 123, 420 A.2d 371 (1980).

12. Further, this is not merely a private, financial dispute between two non-utility parties that exists independent of Section 1529.1, even if "the only issue to be decided is financial responsibility for the charges," *Ace Check Cashing* at slip op. 5, and the Commission should assert jurisdiction as it did in *Ace Check Cashing* despite its assertion of the private nature of the dispute. The Commission certainly has subject matter jurisdiction over both Complainant and Tenant because they both are customers of Met-Ed involved in a dispute where Met-Ed is imposing and relieving a payment obligation pursuant to a section of the Public Utility Code. That section lacks any provision for resort to the civil courts while specifically providing that "the affected utility shall have the right to petition the court of common pleas of the county wherein the

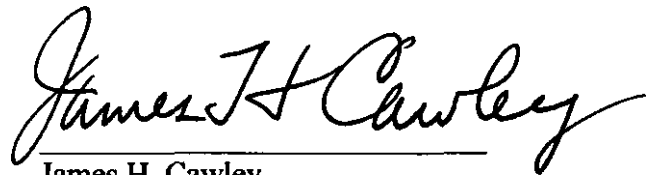
leased premises are located to appoint a receiver to collect rent payments otherwise due the landlord ratepayer directly from the tenants and to pay all overdue and subsequent utility bills therefrom." 66 Pa.C.S. § 1533(a).

13. Moreover, there can be little doubt that the Commission would assert jurisdiction if, for instance, a landlord complained that the public utility was in error that foreign load existed on a tenant's meter, or that an affected public utility took an unreasonable amount of time to certify that foreign load had been removed from a tenant's meter, while the landlord remained responsible for the tenant's usage. Or that the tenant was abusing the landlord's responsibility for paying the tenant's usage until the foreign load is removed by using an inordinate amount of service or by allowing other tenants to use her utility service. Likewise, if a tenant complained that a landlord had retaliated by terminating her utility service, and that the utility failed to give adequate notice to her before discontinuing service. Or if the tenant complained that the utility did not transfer her entire account balance to the landlord, or that foreign load still exists on her meter which the utility refuses to investigate. Under *Ace Check Cashing*, all of these complaints would implicate Section 1529.1, yet only the landlord is required to seek redress in a civil court (the tenant has no need to seek redress because her entire account balance, including arrearages, is transferred to the landlord as of discovery of foreign load).

14. A party is indispensable when that party's rights are so connected with the claim that no decree can be made without impairing those rights. *Sprague v. Casey*, 550 A.2d 184, 189 (Pa. 1988).

15. Tenant presently enjoys the right to be relieved of the disputed amount by the Commission's decision in *Ace Check Cashing*, which Complainant seeks to overturn. Because Tenant's right would be impaired should Complainant succeed, she should be joined as an indispensable party in this matter.

WHEREFORE, in view of the foregoing, Complainant respectfully requests that Valerie Romey be joined in this proceeding as an indispensable party and be given the opportunity to participate if she so wishes.



James H. Cawley  
Pa. Attorney I.D. No. 6896  
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17 South Second Street, 6<sup>th</sup> Floor  
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Counsel for MBPR Partnership, LP

Dated: August 10, 2017

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**VERIFICATION**

I, Michael Brenner, a partner of MBPR Partnership, LP, hereby state that the facts above set forth in the Motion for Joinder of an Indispensable Party 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).

Date: August 7, 2017

  
\_\_\_\_\_  
Michael Brenner

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Motion to Join an Indispensable Party in the manner indicated upon the persons listed below in accordance with the requirements of § 1.54 (relating to service by a party).

**By e-mail and U.S. First Class Mail:**

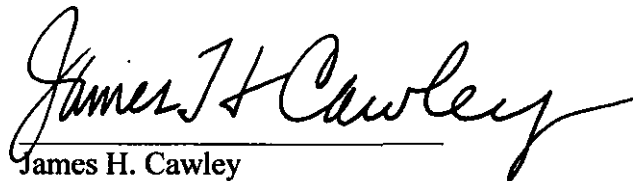
Honorable Mary D. Long  
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**By U.S. First Class Priority Mail, CERTIFIED:**

Valerie Romey  
1003 North George Street  
Second Floor Front  
York, PA 17404



James H. Cawley  
Pa. Attorney I.D. No. 6896  
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Date: August 10, 2017