

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

Craig Jackson

**Public Meeting held August 2, 2018
2565262-ALJ**

v.

Docket No. C-2016-2565262

Metropolitan Edison Company

MOTION OF CHAIRMAN GLADYS M. BROWN

On August 28, 2016, Craig Jackson filed a formal Complaint against Metropolitan Edison Company (Met-Ed), alleging that Met-Ed had not adhered to a consistent policy for cutting trees, harassed him due to his race, failed to restore his property following vegetation management, and requesting that Met-Ed be prohibited from spraying chemicals on the property. On September 26, 2016, Met-Ed filed an Answer and New Matter denying any violation of the Public Utility Code (Code) or the rules and regulations of the Commission. Met-Ed filed a Preliminary Objection on September 26, 2016, and Complainant filed an Answer on October 4, 2016. The Parties both appeared before Administrative Law Judge (ALJ) Buckley on February 7, 2017. The ALJ continued the matter based on a determination that it was not ready to be heard.

A Second Prehearing Order was issued on February 9, 2017, stating that the Commission does not have the authority to order the payment of damages, nor does the Commission have the jurisdiction or authority to resolve allegations of harassment due to race, to discipline utility personnel for alleged harassment due to racial profiling, to direct the discipline or termination of utility employees, or to make any determination save whether the utility has violated specific provisions of the Code or the rules and regulations of the Commission. The Second Prehearing Order also directed the Complainant to amend and augment his original Complaint to state, with specificity, which of his properties were affected by Met-Ed's alleged conduct, because up to that point Complainant had refused to do so despite repeated requests from Met-Ed.¹ Complainant was encouraged to supply any additional relevant factual statements in the amended complaint that would allow the presiding officer and the Commission to understand the case and for Met-Ed to present its defense.

On March 20, 2017, a further hearing Notice was issued setting April 18, 2017, as the date for an evidentiary hearing. On April 11, 2017, having been apprised by counsel for Met-Ed that Complainant had failed to comply with Met-Ed's discovery requests, and being aware that no amended complaint had been filed, the ALJ set forth in a Third Prehearing Order the potential consequences for failure to respond to discovery and for failure to comply with the Orders of a presiding officer. Also, on April 11, 2017, a hearing Notice was issued setting April 13, 2017 as the date for another telephonic prehearing conference. The purpose of the hearing was to address Complainant's failure to reply to Met-Ed's discovery requests, to object to those requests, or to

¹ The Complaint lists 275 Frutchey Court in Mount Bethel as the Complainant's address and does not refer to any other property.

comply with the requirements of the Second Prehearing Order. That prehearing conference was held on April 13, 2017. At that prehearing conference, both Parties agreed with the presiding officer that the formal Complaint was based on Section 1501 of the Code, 66 Pa. C.S. § 1501, Character of service and facilities, in that Complainant's issues centered on Met-Ed's conduct of its vegetation management program on Complainant's property. It was also determined that the property at issue is located at 275 Frutchey Court, Mount Bethel, Pennsylvania. Tr. 5-9. The Parties discussed whether the Complainant would offer exhibits at hearing. The Complainant referred to three documents about vegetation management, one of which was a Met-Ed exhibit. After an extended but ultimately unproductive discussion between the ALJ, Met-Ed's counsel, and the *pro se* Complainant, regarding the need to answer interrogatories, whether a party could utilize another party's exhibit as their own, and a discussion of hearsay, counsel for Met-Ed, moved to dismiss the Complaint due to the Complainant's refusal to answer interrogatories.

On May 5, 2017, Met-Ed filed a Motion to Dismiss endorsed with a Notice to Plead. The Complainant did not file a response. By Initial Decision issued April 11, 2018, the ALJ granted Met-Ed's Motion to Dismiss the Complaint, with prejudice.

I acknowledge that the Complainant in this case has been antagonistic toward Met-Ed's vegetation management personnel to the point where law enforcement had to be involved, this behavior appears to have made him a less than sympathetic party. Sympathetic or not, the Complainant still must be afforded due process.

I believe that the statement made in the second Prehearing Order, that the Commission does not have the jurisdiction or authority to resolve allegations of harassment due to race, was overbroad to the point of being erroneous. The Commission has wide authority and jurisdiction under 66 Pa. C.S. § 1501 to determine whether utility service is reasonable, this includes the manner in which a public utility renders customer service. Additionally, 66 Pa. C.S. § 1502 prohibits public utilities from subjecting any person to any "unreasonable prejudice or disadvantage." The ALJ misstated the law when he determined that the Commission was without authority to rule on an allegation that a customer was mistreated by utility personnel. Because the Second Prehearing Order which framed the scope of the hearing was erroneous, the matter should be remanded for hearing consistent with this motion.

I note that the Initial Decision stated that it took direct questioning from the ALJ at the prehearing conference to get the Complainant to answer basic questions about his case. That is not uncommon with *pro se* litigants. Now that the Complainant has affirmed that the property at issue is the property listed on his Complaint form and, has also answered the question of which exhibits he plans to utilize at hearing,² Met-Ed is in a position to defend the claim at hearing. The Initial Decision stated that, the "Complainant is a well-educated person, clearly of an age to have acquired property and both professional and worldly experience." ID at 11. Whether that is true, or not, does not negate the fact that the Complainant is not an attorney and should not be expected to plead his case and respond to counsel in the way that someone trained in the law

² There may be confusion on the Complainant's part with regard to sponsoring an exhibit and cross-examining the opposition regarding its exhibits.

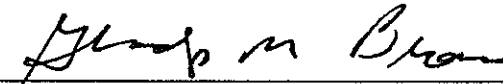
would.³ With that said, I caution the Complainant that he would be better served by our process if he produces information when it is requested, to the best of his ability.

THEREFORE, I MOVE THAT:

1. The ALJ's Initial Decision be reversed consistent with this Motion.
2. The Complaint be remanded to the Office of Administrative Law Judge for an evidentiary hearing.
3. The Office of Special Assistants draft an Opinion and Order consistent with this Motion.

August 2, 2018

Date



Gladys M. Brown, Chairman

³ This Commission has long recognized the mitigating affect *pro se* status confers upon litigants unlearned in the law when confronted with technical violations of its procedural rules. *Carlock v. The United Telephone Co. of Pa.*, Docket No. F-00163617 (July 14, 1993). Most important, from my perspective, the Commission has stated that it is in the public interest that all litigants, particularly *pro se* litigants, be afforded a meaningful opportunity to be heard. *Amir V. Williams v. PECO Energy Co.*, Docket No. C-2010-2190024 (Order entered January 13, 2011).