

Lauren M. Lepkoski, Esq.  
(610) 921-6203  
(330) 315-9263 (Fax)

December 14, 2018

**VIA EMAIL AND FIRST CLASS MAIL**

Administrative Law Judge Jeffrey A. Watson  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
301 5<sup>th</sup> Avenue, Suite 220  
Pittsburgh, PA 15222

**Re: Janet E. Cole v. Metropolitan Edison Company**  
**Docket No. C-2018-3003023**

Your Honor:

Please accept this letter as Metropolitan Edison Company's ("Met-Ed" or the "Company") response in opposition to Janet Cole's ("Complainant"), "Notice and Petition for Judicial Determination of Jurisdiction" ("Petition"),<sup>1</sup> as directed by Your Honor's November 27, 2018 Interim Order. At the outset, it is unclear what relief is being sought by the Complainant through this Petition; it has been assumed for purposes of this response that the Petition will be treated as a petition for declaratory order as provided for under Section 5.42 of the Commission's regulations. In this instance, the Petition is not a proper pleading under Section 5.42 of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code 5.42, as the Complainant has failed to meet the first requirement of a petition for declaratory order: "state clearly and concisely the controversy or uncertainty which is the subject of the petition." While it is true that the Complainant identifies three questions she is seeking a response to, each of those questions relate to the jurisdiction of Your Honor and the Commission to adjudicate or enforce the law related to those issues raised in the Formal Complaint filed by the Complainant on June 15, 2018 which initiated the above-referenced docketed proceeding ("Formal Complaint"). It is presumed that by filing the Formal Complaint, the Complainant understood the jurisdiction of the Commission to extend to the matters raised within her Formal Complaint. To the extent the Complainant no longer believes the Commission has jurisdiction to adjudicate these matters, the Complainant is entitled to unilaterally request that the Formal Complaint be withdrawn. To date, no such request has been made. Notably, the Company (which is the only other party to this proceeding) has not questioned the jurisdiction of the Commission over the matters raised within this proceeding. As such, it is unclear what issue of jurisdiction exists that could create any actual "controversy or uncertainty" related to the Commission's jurisdiction over this matter – and upon which the Petition can be considered. Therefore, the Petition should be denied.

<sup>1</sup> By way of background, the Complainant filed this Petition without a signature on November 18, 2018. On November 21, 2018, Secretary Chiavetta sent correspondence to the Complainant requesting an original signature to the document. On November 26, 2018, the Complainant refiled her Petition with an original signature.

However, to the extent Your Honor deems the Petition as in compliance with the Commission's rules related to practice and procedure, the Company provides the following response to the three questions raised by the Complainant, which seem to include: 1) a request for declaration of the universe of entities that may file a formal complaint before the Commission; 2) whether Your Honor has jurisdiction to order the Commission to change policy, procedures, rules or rulings; and 3) whether Your Honor or the Commission has the jurisdiction to order a change of the interpretation of Act 129 of 2008.<sup>2</sup>

Section 701 of the Pennsylvania Public Utility Code states the following:

The commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any 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. Any public utility, or other person, or corporation likewise may complain of any regulation or order of the commission, which the complainant is or has been required by the commission to observe or carry into effect. The Commonwealth through the Attorney General may be a complainant before the commission in any matter solely as an advocate for the Commonwealth as a consumer of public utility services. The commission may prescribe the form of complaints filed under this section.

66 Pa.C.S. § 701. Relatedly, Section 5.21(a) of the Commission's regulations states that:

(a) A person complaining of an act done or omitted to be done by a person subject to the jurisdiction of the Commission, in violation, or claimed violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission, may file a formal complaint with the Commission.

52 Pa. Code § 5.21. Finally, through section 501 of the Pennsylvania Public Utility Code, the Pennsylvania General Assembly has granted the following powers to the Commission:

**(a) *Enforcement of provisions of part.*** — In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.

---

<sup>2</sup> 66 Pa.C.S. § 2806.1, *et seq.* ("Act 129").

(b) *Administrative authority and regulations.* — The commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.

(c) *Compliance.* — Every public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof.

66 Pa.C.S. § 501. As outlined at the beginning of this letter, is presumed that by filing the Formal Complaint, the Complainant understood – more likely, *actively believed* - the jurisdiction of the Commission to extend to the matters raised by her dispute. If the Complainant now disagrees that the Commission has the appropriate jurisdiction to hear her Formal Complaint, she may at any time request that the Formal Complaint be withdrawn – a right she has not exercised.

Furthermore, while the Pennsylvania General Assembly is the only body that can make new **laws** or **change** existing **laws**, Act 129 specifically requires that the Commission oversee the jurisdiction of electric distribution companies' smart meter technology procurement and installation plans. Specifically, Act 129 states the following:

(f) *Smart Meter technology and time of use rates.*

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a Smart Meter technology procurement and installation plan with the commission for approval. The plan shall describe the Smart Meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

66 Pa.C.S. § 2807.1(f). Indeed, by virtue of its being enacted under the Pennsylvania Public Utility Code, it is necessarily under the Commission's jurisdiction given that the entirety of the Public Utility Code is to be implemented and enforced by the Commission per the statutory mandate in Section 501.<sup>3</sup> It is indisputable, following a read of this language, that the Commission has jurisdiction over the Complainant's Formal Complaint. As such, should the Petition not be denied for its lack of stating an actual controversy or uncertainty, Your Honor and the Commission should affirm the Commission's jurisdiction over the matters contained within the Formal Complaint. In the alternative, the Complainant should be directed to request a withdrawal of her Formal Complaint so as to limit the significant expenditure of resources by the Commission and the parties

<sup>3</sup> In relevant part:

(a) Enforcement of provisions of part. — In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, *and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof*; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.

66 Pa.C.S. § 501(a) (emphasis added).

that continues to unnecessarily grow for each day that she disputes the Commission's jurisdiction over the very complaint she herself voluntarily brought before it.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Lauren M. Lepkoski

krak

c: Rosemary Chiavetta, Secretary (via e-filing)  
As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JANET E. COLE**

**V.**

**METROPOLITAN EDISON COMPANY**

:  
:  
:  
:  
:

**Docket No. C-2018-3003023**

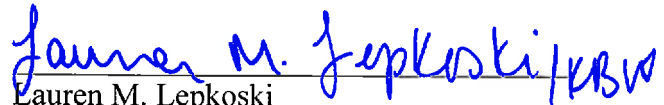
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document of Metropolitan Edison Company upon the individual listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, as follows:

Janet E. Cole  
630 Euclid Avenue  
Temple, PA 19560

Dated: December 14, 2018



Lauren M. Lepkoski

Tori L. Giesler

FirstEnergy Service Company

2800 Pottsville Pike

P.O. Box 16001

Reading, Pennsylvania 19612-6001

(610) 921-6203

(610) 921-6658

[llepkoski@firstenergycorp.com](mailto:llepkoski@firstenergycorp.com)

[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)