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January 14, 2019

VIA ELECTRONIC FILING

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

Re: Karen Ann Wallace v. Metropolitan Edison Company
Docket No. C-2018-3001564

Dear Secretary Chiavetta:

Enclosed please find the Motion to Compel of Metropolitan Edison Company with regard to the above-captioned matter. This document has been served on the Complainant as shown in the Certificate of Service.

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

Very truly yours,



Tori L. Giesler

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Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KAREN ANN WALLACE

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2018-3001564

NOTICE TO PLEAD

TO: Karen Ann Wallace

Pursuant to 52 Pa. Code § 5.102(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion to Compel of Metropolitan Edison Company within **five (5) days** from the service of the Notice, the facts set forth by Metropolitan Edison Company in the Motion may be deemed to be true, thereby requirement no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service to counsel for Metropolitan Edison Company, and where applicable, the Administrative Law Judge presiding over the case.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Administrative Law Judge Jeffrey A. Watson
Pennsylvania Public Utility Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Lauren M. Lepkoski
Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Date: January 14, 2019



Tori L. Giesler, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KAREN ANN WALLACE

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v.

Docket No. C-2018-3001564

METROPOLITAN EDISON COMPANY

**MOTION OF METROPOLITAN EDISON COMPANY TO COMPEL RESPONSES TO
INTERROGATORIES AND DOCUMENT REQUESTS**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Metropolitan Edison Company (“Met-Ed” or the “Company”) by and through its attorneys, Lauren M. Lepkoski and Tori L. Giesler, and pursuant to 52 Pa. Code §§ 5.371-5.372, hereby files this Motion to compel Karen Ann Wallace (“Complainant”) to provide full and complete responses to interrogatories and document requests issued by the Company on November 20, 2018. In support thereof, the Company avers as follows:

I. BACKGROUND

1. On April 27, 2018, the Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding her electric service at 9734 Kistler Valley Road, Kempton, Pennsylvania 19529.

2. On May 21, 2018, the Company filed its Answer and New Matter denying the material allegations in the Formal Complaint. On that same day, the Company also filed Preliminary Objections to the Formal Complaint.

3. On June 25, 2018, a Motion Judge Assignment Notice was issued assigning Administrative Law Judge (“ALJ”) Jeffrey A. Watson to this proceeding.

4. On July 20, 2018, ALJ Watson issued an Interim Order denying the Company's Preliminary Objections and ordering that the Formal Complaint be referred to the Commission's Mediation Unit for mediation review.

5. — On November 20, 2018, in accordance with 52 Pa. Code § 5.341, the Company forwarded to the Complainant interrogatories and document requests ("Discovery Requests") via first class mail. In its Discovery Requests, the Company sought information and documents related to the Complainant's allegations regarding the Company's smart meters.

6. A full copy of the Company's Discovery Requests is attached as Exhibit A.

7. In correspondence to ALJ Watson dated December 10, 2018, Complainant requested additional time to respond to the Company's Discovery Requests. In this correspondence, Complainant also asserted that she "question[ed] some of the inquests validity and relevancy to [her] complaint," and that "[t]he interrogatory goes far beyond personal with specific questions about my family and household."

8. On December 19, 2018, ALJ Watson issued an Interim Order granting Complainant's request for an extension of time to respond to the Company's Discovery Requests. The Interim Order required Complainant to serve objections to the Discovery Requests upon Counsel for Met-Ed by January 4, 2019 and to provide responses to all other Discovery Requests by January 14, 2019. The Interim Order did not address Complainant's arguments related to the scope or relevancy of the Discovery Requests.

9. In correspondence dated January 1, 2019, Complainant submitted her objections to the Discovery Requests to Counsel for the Company. In this correspondence, Complainant generally objects, without explanation, to certain of the Company's Discovery Requests,

including: 2 (a)-(i), 7(d), 8(a)-(c), 10(a)-(b), 11(a), 12(a), 17(d)-(e), 25(a)-(d), 26(a)-(d), 28, and 32.

10. A full copy of the Complainant's objections to the Discovery Requests is attached as Exhibit B.

II. MOTION TO COMPEL

A. Complainant's Objections Do Not Meet the Requirements of 52 Pa. Code § 5.342.

11. The Commission's regulations clearly set forth the requirements for objections to discovery requests in a formal proceeding. Specifically, 52 Pa. Code § 5.342(c), which applies to both interrogatories and requests for documents (by incorporation), requires that the objection: (1) be served instead of an answer, (2) restate the interrogatory or part thereof deemed objectionable and the specific ground for the objection, (3) include a description of the facts and circumstances purporting to justify the objection, (4) be signed by the attorney making it, (5) not be valid if based solely on the claim that an answer will involve an opinion or contention that is related to a fact or the application of law to fact, and (6) not excuse the answering party from answering the remaining interrogatories or subparts of interrogatories to which no objection is stated.

12. Complainant's objections do not comply with these requirements and should be overruled. Rather than providing a description of the underlying facts and/or circumstances purporting to justify the objections, Complainant's response simply states "Objection." By failing to provide the underlying reason for her objections, Complainant has prevented the Company from having the opportunity to meaningfully address her specific issues with each of the requests. This rule exists for a reason: Met-Ed should not be required to speculate regarding the legal or factual basis for Complainant's objections. Complainant's failure to comply with these requirements

justifies an order overruling the objections and compelling Complainant to respond to the Company's requests.

B. Met-Ed's Discovery Requests Are Relevant and Within the Permissible Scope of Discovery.

13. The Commission's regulations permit the discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa. Code § 5.321(c).

14. Generally speaking, this Commission applies a standard of relevance which is less restrictive than that required by parties to present information into the evidentiary record. It is not grounds 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. 52 Pa. Code § 5.321(c).

15. Discovery may be obtained regarding any matter relevant to the subject matter. Relevant evidence is evidence that tends to make an act at issue more or less probable. Moreover, evidence is relevant if it advances the inquiry in some degree and, thus, has probative value. Although the law does not furnish an absolute test of relevancy, the Pennsylvania Supreme Court follows a two-part analysis for determining relevance. In *Commonwealth v. Stewart*, 461 Pa. 274, 336 A.2d 282 (1975), the Court held that "[i]t must be determined first if the inference sought to be raised by the evidence bears upon a matter at issue in this case and, second, whether the evidence renders the desired inference more probable than it would be without the evidence. *Id.* at 284.

16. The information sought here by the Company is relatively simple and straightforward. It is directly relevant and material to the issues raised by the Complainant in her Formal Complaint and the documents attached thereto by Complainant. The Company is entitled to the requested information to enable it to fully investigate what information the Complainant relied on to make the allegations she did in her Formal Complaint.

17. Complainant's first general objection is to the Company's second discovery request and its sub-parts. Complainant also objects to the Company's thirty-second request, which seeks documentation supporting the responses to the Company's second request. These requests seek information underlying allegations made by Complainant related to potentially deleterious health effects caused by the installation of a smart meter on her property. Specifically, Complainant alleges in a document attached to her complaint that her "husband is a retired firefighter/EMT with health issues," her "son is diagnosed with a neurological disorder," and that she is "worri[ed] that prolonged and continuous exposure to EMT radiation might cause them further damages and harm." Complainant also alleges that "[t]here is no long term study of evidence smart meters are safe for everyone and they do not pose a health risk to those vulnerable and susceptible to such exposure." In short, Complainant argues in this document that Met-Ed should not be allowed to install a smart meter at her property because of potentially negative health effects she alleges it may have on members of her household. The Company is entitled to seek information that Complainant has supporting the truth of these allegations and testing Complainant's assertion that the installation of the smart meter will negatively impact the health of members of her household.

18. Complainant also generally objects to discovery requests that seek information related to the presence and use of common household items that are known to emit electromagnetic fields in her home.¹ Complainant alleges in a document attached to her complaint that she is concerned that "continuous and prolonged exposure to EMT radiation might cause [members of her household] further damages and harm." Thus, the information sought by these requests is directly relevant to the allegations made by Complainant and are discoverable.

¹ Complainant's objects to the Company's tenth, eleventh, twelfth, and thirty-second requests, which fall generally into this category. Notably, Complainant objects to requests 8(a)-(c), which do not exist. The Company's eighth request seeks information regarding the use of cordless phones in Complainant's home and has only one sub-part.

19. Complainant finally objects generally to requests that seek information related to her educational and employment history.² This objection is improper. These requests seek information that is relevant and within the permissible scope of discovery. Complainant makes allegations throughout her Formal Complaint and the document attached thereto that espouse specific knowledge regarding how a smart meter operates and the potential negative effects the installation of one will have on the privacy, health, and safety of herself and members of her household. Complainant's educational and employment history is directly relevant to the weight that should be given to her allegations regarding these issues and, accordingly, is discoverable in this proceeding.

20. The Commission's regulations at 52 Pa. Code § 5.371 address the consequences of a participant's failure to comply with the Commission's discovery regulations. Section 5.371 provides that:

- (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.

21. Further, 52 Pa. Code § 5.372 provides that the presiding officer may impose appropriate sanctions upon a party found to be found in violation of the obligations set forth in the Commission's regulations.

22. As set forth above, the Complainant's objections are incorrect, improper, and do not comply with the Commission's regulations. The Company requests that the Complainant's objections be denied and that the Complainant be directed to provide full and complete responses

² Complainant objects to the Company's seventh request (sub-part (d)), seventeenth request (sub-parts (d) and (e)), twenty-fifth, and twenty-sixth requests, which fall generally into this category.

to the Discovery Requests to be received by the undersigned counsel for the Company within five business days after entry of an Order Granting the Motion to Compel.

23. In the event the Complainant is directed by the Commission to respond to the Company's Discovery Requests, but fails to, the Company respectfully requests that the Formal Complaint against the Company be dismissed in its entirety.

WHEREFORE, Metropolitan Edison Company respectfully requests that the Commission issue an Order compelling the Complainant to fully and completely respond to the Discovery Requests such that the responses are received by counsel for the Company no later than five business days after entry of an Order on the Motion to Compel. Further, in the event the Complainant does not comply with the Order directed by the Commission and fails to respond to the Company's Discovery Requests, the Company respectfully requests that the Commission dismiss in its entirety the Formal Complaint of Karen Ann Wallace.

Respectfully submitted,

Dated: January 14, 2019

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Counsel for Metropolitan Edison Company

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KAREN ANN WALLACE

v.

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Docket No. C-2018-3001564

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Motion to Compel 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:

Karen Ann Wallace
9734 Kistler Valley Road
Kempton, PA 19529

Administrative Law Judge Jeffrey A. Watson
Pennsylvania Public Utility Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Dated: January 14, 2019



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