

Tori L. Giesler, Esq.
(610) 921-6658
(330) 315-9263 (Fax)

June 18, 2019

VIA ELECTRONIC FILING

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

Re: Eldon Kibler v. Metropolitan Edison Company
Docket No. C-2018-3003158

Dear Secretary Chiavetta:

This letter serves as a brief reply on behalf of Metropolitan Edison Company (“Met-Ed”) to the letter filed by the Complainant in the above-referenced matter, dated May 16, 2019 and re-served on June 4, 2019 (“May 16 Letter”).¹ The letter purports to be an “appeal” of the Initial Decision issued in this matter and served on the parties by Secretarial Letter dated May 7, 2019. To the extent this letter is treated as exceptions to Administrative Law Judge (“ALJ”) Jeffrey A. Watson’s Initial Decision, Met-Ed offers this brief reply.

The Complainant fails to identify any error of fact or law made by ALJ Watson in the conclusions of fact or law reached in his Initial Decision, or for that matter, with any portion of the Initial Decision. Instead, the Complainant alleges only one error: that ALJ Watson erred by unilaterally scheduling a prehearing conference “using a process that was banned by [him] in a letter dated 15 October 2018.”² Notably, Mr. Kibler has misrepresented the procedural facts in this case. In fact, the prehearing conference was not convened at the request of any individual party to this case, whether unilaterally or otherwise. Instead, the prehearing was directed, by the presiding officer in this case - ALJ Watson – following Met-Ed’s filing of its Motion to Dismiss on February 26, 2019. In particular, the Interim Order issued on March 12, 2019 specifically advised, in the first paragraph, that the prehearing conference was being scheduled for the very purpose of answering various questions raised in correspondence sent by Mr. Kibler. Further, another Interim Order was issued on March 25, 2019 which specifically required all parties to

¹ Note that the letter re-serving/refiling the letter is dated May 4, 2019; Met-Ed believes this was intended to be June 4, 2019.

² May 16 Letter at p. 1, citing ALJ Watson’s Interim Order Establishing Initial Litigation Schedule, dated October 15, 2018, which states: “Any Party may request a prehearing conference or settlement conference, in writing, **after conferring with the opposing Party** and requesting consent to the scheduling of such a conference” (emphasis added).

attend the prehearing conference, and explicitly providing the following warning in bold and underlined text:

You must call into the conference on the scheduled day and time and participate at the conference. If you fail to do so, your case may be dismissed or other appropriate sanctions may be imposed against you. You will not be called by the Administrative Law Judge.

March 25, 2019 Interim Order at p. 4. Despite that warning, the Complainant was in fact called, and still failed to appear at the prehearing conference.³ What Mr. Kibler fails to recognize is the fact that under the Pennsylvania Public Utility Commission's ("Commission") regulations at 52 Pa. Code § 5.222, the presiding officer himself has the authority to convene a prehearing conference should he see fit – without the "consent" of any party to the proceeding. That is what he did here. On the other hand, Met-Ed is unaware of any regulation that gives Mr. Kibler the authority to disregard numerous orders of the presiding officer.

What Mr. Kibler further fails to address is that he did in fact disregard numerous orders of the presiding officer, by:

1. failing to respond to any discovery in this proceeding as directed by ALJ Watson's February 8, 2019 Interim Order granting Met-Ed's Motion to Compel;
2. failing to provide notification of his witnesses in response to the October 15, 2018 Interim Order;
3. failing to provide a status report in response to the October 15, 2019 Interim Order; and
4. failing to appear at the prehearing conference held on March 26, 2019, despite numerous orders to appear.

To be clear, Mr. Kibler has not participated at all in this proceeding except to file the initial formal complaint and to send a variety of correspondence indicating what he is not going to do. It is wholly unreasonable for a complainant, who bears the burden of proof, to expect that their case can move forward without their being a willing participant in the process, and neither Met-Ed or the Commission should be required to continue a process on a Complainant's behalf, lest significant resources be wasted and Met-Ed's due process rights be jeopardized.

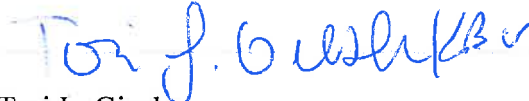
For all of these reasons, the Initial Decision served on May 7, 2019 should be sustained and Mr. Kibler's case should be dismissed with prejudice and the record marked closed.

³ See Interim Order Closing the Record issued April 30, 2019 at p. 6.

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Page 2

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

Very truly yours,



Tori L. Giesler

c: Per Certificate of Service
Office of Special Assistants (via email at ra-OSA@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ELDON KIBLER

V.

METROPOLITAN EDISON COMPANY

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Docket No. C-2018-3003158

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of this document of Metropolitan Edison Company upon the individuals 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:

Eldon Kibler
420 Snyder Road
Reading, PA 19605

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

Dated: June 18, 2019



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
tgiesler@firstenergycorp.com

Counsel for Metropolitan Edison Company