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August 21, 2019

VIA ELECTRONIC FILING

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

Re: Judith D. Hendin v. Metropolitan Edison Company
Docket No. C-2018-3003324

Dear Secretary Chiavetta:

Enclosed please find the Motion in Limine 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

Tori L. Giesler

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Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JUDITH D. HENDIN

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2018-3003324

NOTICE TO PLEAD

TO: Judith D. Hendin

Pursuant to 52 Pa. Code § 5.103, you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion in Limine of Metropolitan Edison Company within **twenty (20) 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 pleading, 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.

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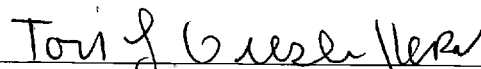
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

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

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

Date: August 21, 2019


Tori L. Giesler, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JUDITH D. HENDIN

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2018-3003324

**MOTION IN LIMINE OF METROPOLITAN EDISON COMPANY
TO EXCLUDE TESTIMONY**

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 § 5.103, hereby files this Motion in Limine to exclude any expert witness of Judith D. Hendin (“Complainant”) for her failure to comply with Administrative Law Judge (“ALJ”) Jeffrey A. Watson’s Orders. In support thereof, the Company avers as follows:

I. BACKGROUND

1. On June 29, 2018, the Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding 402 Woodland Road, Easton, Pennsylvania 18042 (the “Service Location”) under Account No. 100017185438 (“Account”) which was electronically served on the Company on July 11, 2018.

2. On July 31, 2018, the Company filed its Answer and New Matter denying the material allegations as well as Preliminary Objections.

3. On August 21, 2018, the Complainant filed a request for extension of time to file a reply to the Company’s Answer and New Matter and Preliminary Objections.

4. On August 22, 2018, the Complainant filed an addendum to her request for extension of time to file a reply to the Company's Answer and New Matter and Preliminary Objections.

5. On August 23, 2018, a Motion Judge Assignment Notice was issued assigning this matter to Administrative Law Judge Jeffrey A. Watson for disposition.

6. On August 24, 2018, an Interim Order was issued by ALJ Watson which granted the Complainant's request for an extension of time until September 12, 2018, to file a response to the Company's Answer and New Matter and Preliminary Objections.

7. On September 14, 2018, in accordance with 52 Pa. Code § 5.341, the Company forwarded to the Complainant interrogatories and document requests ("Company's 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.

8. On October 2, 2018, the Complainant submitted her responses to the Company's Discovery Requests. That same day, the Complainant also filed a letter requesting that the proceedings be "paused" until December 15, 2018.

9. On October 18, 2018, an Interim Order was issued by ALJ Watson denying the Company's Preliminary Objections.

10. Also on October 18, 2018, an Interim Order Establishing Initial Litigation Schedule was issued which set forth the schedule for discovery, the identification of witnesses, and filing of motions in this proceeding. Relevant to this Motion, ALJ Watson issued a witness notification deadline of January 18, 2019 and a discovery deadline of April 19, 2019.

11. On October 29, 2018, the Complainant filed a response to the Company's Preliminary Objections.

12. On November 1, 2018, Attorney Waldron entered her appearance as counsel of record for the Complainant.

13. On January 17, 2019, the Complainant forwarded to the Company interrogatories and document requests (“Complainant’s Discovery Requests”) via electronic and first class mail

14. On January 18, 2019, in accordance with the Interim Order Establishing Litigation Schedule, both the Complainant and the Company provided notices and summaries of testimony for its factual and expert witnesses. The Complainant listed her anticipated factual and expert witnesses as herself, Dr. David Carpenter, including a summary of testimony, and Dr. William G. Kracht, D.O., including both public and confidential versions of written testimony. The Company listed its anticipated factual and expert witnesses as John Ahr, Dr. Christopher C. Davis, Ph.D., and Dr. Mark Israel, M.D.

15. On January 28, 2019, the Company objected to a specific question in Complainant’s Discovery Requests.

16. On January 29, 2019, the Complainant submitted a second notice of anticipated witnesses which listed as anticipated witnesses only Dr. David Carpenter, with a summary of expected testimony enclosed, and Dr. William G. Kracht, D.O., with written testimony enclosed.

17. On February 11, 2019, the Company responded to the Complainant’s Discovery Requests.

18. On May 9, 2019, in accordance with the Interim Order Establishing Litigation Schedule, Complainant’s counsel submitted a status report wherein it was averred that the Complainant was interested in being advised of relocation options for “Ms. Hendin’s property” and that a field visit was being scheduled with the Company. Additionally, the Complainant averred that written testimony of Dr. Kracht and a summary of testimony for Dr. Carpenter had

previously submitted in January 2019. The Complainant further requested that should a prehearing conference be scheduled, it be held after June 30, 2019, in order to provide the Complainant with ample time to review the relocation options.

19. On May 10, 2019, in accordance with the Interim Order Establishing Litigation Schedule, the Company submitted a status report wherein the Company averred that the Complainant had expressed an interest in reviewing relocation of the meter as a potential option and that the Company suggested that a prehearing conference be scheduled for further discussion in anticipation of evidentiary hearings should relocation not be pursued by the Complainant.

20. On May 23, 2019, an Interim Order Requiring Proposed Hearing Conference and Hearing Dates was issued.

21. On June 14, 2019, Company representatives went to the Service Location and met with the Complainant and her counsel, at her request, to evaluate potential meter relocation options at the Service Location.

22. During the site meeting, the Company was alerted that the Complainant was not the owner of the Service Location, but rather a tenant residing at the Service Location.

23. On July 15, 2019, in accordance with the Interim Order entered May 23, 2019, the Company filed a second status report.

24. On July 16, 2019, in accordance with the Interim Order entered May 23, 2019, the Complainant filed a second status report.

25. On July 26, 2019, the Complainant filed a Motion to extend the schedule pending prehearing conference and request of a thirty-day extension to file the written testimony of Dr. David Carpenter.

26. The Motion avers that the Company received the written testimony of the Complainant and Dr. Kracht in January 2019, over seven months ago. While the Company did receive the written testimony of Dr. Kracht, the Company received **no** such written testimony of the Complainant and the Complainant provided no indication at that time that written testimony of the Complainant was being provided. A copy of the Complainant's witness notification of January 18, 2019 is attached as Exhibit A and a copy of the Complainant's witness notification of January 29, 2019 is attached as Exhibit B.

27. Additionally, the Complainant provided notification of her intent to utilize Dr. David Carpenter as an expert witness in January 2019, many months before the parties initially discussed the potential of meter relocation at the Service Location.

28. On August 13, 2019, ALJ Watson entered an Interim Order Granting Complainant's Extension Request, prior to the twenty-day deadline for the Company's response.

29. On August 14, 2019, counsel for the Company contacted counsel for the Complainant inquiring as to the testimony of the Complainant that was allegedly served. In response, the Company received an out of office message directing all inquiries to a member of opposing counsel's support staff.

30. On August 14, 2019, counsel for the Company directed her inquiry to the identified support staff seeking the testimony in question.

31. On August 15, 2019, counsel for the Company was alerted by opposing counsel's support staff that said testimony could not be located and that opposing counsel would address the matter upon her return to the office on Monday, August 19, 2019.

32. As of the date of this motion, the Complainant's testimony has not been served on the Company.

33. The Company now files this Motion in Limine the Formal Complaint of the Complainant due to her failure to adhere to the deadlines set by the presiding officer and her misrepresentations regarding testimony.

II. MOTION IN LIMINE

34. The Commission's Rules of Administrative Practice and Procedure permit the filing of motions for relief. Such motions must set forth the ruling or relief sought and state the grounds therefor and the statutory or other authority upon which it relies. 52 Pa. Code § 5.103(a).

35. A motion *in limine* is a procedure for obtaining a ruling on the admissibility of evidence prior to or during trial, but before the evidence has been offered. *In re PECO Energy Co.*, Docket No. A-00110550F0147, (Opinion and Order entered June 22, 2000). According to *Ohlbaum on the Pennsylvania Rules of Evidence*, a motion *in limine* is an application to the trial court, generally made pretrial or outside the jury's presence, requesting a ruling to determine the admissibility of evidence. *See, Commonwealth v. Reese*, 31 A.3d 708 (Pa. Super. Ct. 2011). The purpose of a motion *in limine* is to provide the court with the opportunity to consider the admissibility of prejudicial evidence and determine whether curative instructions or other limitations are necessary before the jury is permitted to hear the evidence, so as to avoid a mistrial or reversal. *Commonwealth v. Noll*, 662 A.2d 1123 (Pa. Super. Ct. 1995). A ruling in a pretrial motion *in limine* provides counsel with a basis upon which to structure trial strategy.

36. The Commission has considered such motions in a number of proceedings and has granted them where appropriate. *See, e.g., Pa. Pub. Util. Comm'n v Audubon Water Co.*, 92 Pa. P.U.C. 206 (1999); *Pa. Pub. Util. Comm'n v Phila. Gas Works*, 98 Pa. P.U.C. 121 (2003).

37. The Commission's rules provide that relevant and material evidence is generally admissible subject to exclusion on the other grounds. 52 Pa. Code § 5.401(a).

38. Evidence will be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues or considerations of undue delay or waste of time. 52 Pa. Code § 5.401(b)(2).

39. Presiding officers are empowered to control the receipt of evidence by ruling on the admissibility of evidence and by confining the evidence to the issues in the proceeding and will "actively employ these powers to direct and focus the proceedings consistent with due process." 52 Pa. Code § 5.403(a)-(b). This authority includes "imposition of limitation on the scope of evidence to be presented on issues raised in a proceeding." 52 Pa. Code § 5.403(c).

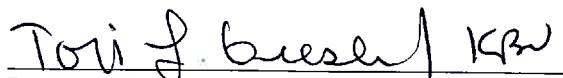
40. As a result of the Complainant's failure to timely provide the direct testimony of Dr. David O. Carpenter despite ample time to have done so, she has demonstrated her lack of cooperation and willingness to participate in this proceeding as required under the Commission's regulations. As a result, the Complainant should be barred from presenting the expert testimony of Dr. David O. Carpenter at the evidentiary hearing.

41. Despite being given the opportunity to cure the lack of Ms. Hendin's own testimony which Complainant claims to have served on the Company, none has been produced. The Company can only assume that no such testimony exists. As such, due to the fact that ample time has been available to prepare this testimony, the fact that it was represented that it was already produced, and the fact that there has been no effort to cure the lack of service of this testimony, the Complainant should be barred from introducing the testimony of Ms. Judith Hendin at the evidentiary hearing.

WHEREFORE, Metropolitan Edison Company respectfully requests respectfully requests that Commission (1) grant this Motion in Limine to Exclude Evidence; (2) preclude Complainant Judith D. Hendin from presenting expert testimony of David O. Carpenter relating to her Formal Complaint; (3) preclude Complainant Judith D. Hendin from personally presenting testimony relating to her Formal Complaint; and (4) grant any other relief deemed appropriate.

Respectfully submitted,

Dated: August 21, 2019



Lauren M. Lepkoski
Attorney No. 94800
Tori L. Giesler
Attorney No. 207742
FirstEnergy Service Company
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Counsel for Metropolitan Edison Company

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JOANNA A. WALDRON
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January 18, 2019

Lauren M. Lepkoski
Tori L. Giesler
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P.O. box 16001
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Sent via email and regular mail:

llepkoski@firstenergycorp.com

tgiesler@firstenergycorp.com

Re: Judith D. Hendin v. Metropolitan Edison Company
Docket No. C-2018-3003324

Dear Ms. Lepkoski and Ms. Giesler:

Enclosed please find Complainant, Judith Hendin's Identification of Witnesses pursuant to the Interim Order. A copy of the Confidential version of Dr. Kracht's testimony will be sent via mail only.

Very truly yours,



Joanna A. Waldron
For CURTIN & HEEFNER LLP

JAW:jmd
Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Judith D. Hendin

V.

Metropolitan Edison Company

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C-2018-3003324

**COMPLAINANT'S IDENTIFICATION OF FACT AND EXPERT TESTIMONY
PURSUANT TO THE INTERIM ORDER AND LITIGATION SCHEDULE**

Pursuant to the October 18, 2018 Interim Order and Litigation Schedule ¶¶ 1 and 2, Complainant Judith D. Hendin, ("Complainant" or "Ms. Hendin"), by and through her attorneys, identifies the following testimony in addition to Ms. Hendin to Defendants Metropolitan Edison Company ("Met-Ed" or "Company"):

A. Dr. David O. Carpenter, 2749 Old State Road, Schenectady, New York 12303. Dr. Carpenter will provide a professional opinion about the scientific basis for the Complainant's health concerns related to the proposed installation of a smart meter in her residence. Dr. Carpenter will explain the bioeffects of exposure to smart meters, including the adverse effects of exposure to radiofrequency radiation and electromagnetic energy, the continuous nature of exposure experienced with smart meters and electrohypersensitivity. Testimony will include Dr. Carpenter's professional opinion based on his experience as a public health physician, medical researcher, and educator, regarding the safety and reasonableness of utility services and facilities that require involuntary exposure to smart meters.

2. Dr. William G. Kracht, D.O. See enclosed Testimony of Dr. Kracht, Public and Confidential Version.

Date: 1/18/19

s/Joanna A. Waldron
Joanna A. Waldron, Esq,
P.A. ID # 84768
CURTIN & HEEFNER LLP
Doylestown Commerce Center
2005 South Easton Road, Suite 100
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CELEBRATING OVER 80 YEARS

JOANNA A. WALDRON
JAW@curtinheefner.com

January 29, 2019

VIA EMAIL & U.S. MAIL (jeffwatson@pa.gov)

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

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LEGAL DEPT.

Re: **Judith D. Hendin v. Metropolitan Edison Company**
Docket No. C-2018-3003324

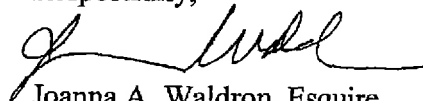
Dear Judge Watson:

Enclosed please find the Certificate of Service for the Complainant's Identification of Fact and Expert Testimony Pursuant to the Interim Order and Litigation Schedule. We identified the following witnesses to counsel for First Energy/Metropolitan Edison Company ("Met-Ed") for an upcoming hearing: Dr. David O. Carpenter (summary of expected testimony); Dr. William G. Kracht, D.O. (written testimony enclosed).

Ms. Hendin reserves the right to add additional witnesses based upon the list provided by the Respondent.

Should you have any questions or concerns regarding this information, please feel free to contact me.

Respectfully,



Joanna A. Waldron, Esquire
CURTIN & HEEFNER LLP

JAW/cvp
Enc.

Cc: Rosemary Chiavetta, Secretary (Cover letter and COS only via e-filing)
Certificate of Service

C&H
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Via E-FILING

January 29, 2019

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

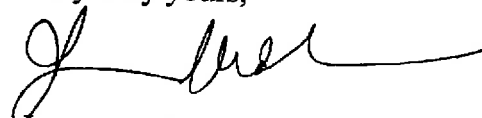
Re: Judith D. Hendin v. Metropolitan Edison Company
Docket No. C-2018-3003324

Dear Secretary Chiavetta:

Enclosed please find a Certificate of Service for Complainant's Identification of Fact and Expert Testimony Pursuant to the Interim Order and Litigation Schedule in the above-referenced matter.

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

Very truly yours,



Joanna A. Waldron, Esq.
CURTIN & HEEFNER, LLP

JAW/cvp
Enc.
Cc: per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Judith D. Hendin

v.

Metropolitan Edison Company

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C-2018-3003324

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Complainant's Identification of Fact and Expert Testimony Pursuant to the Interim Order and Litigation Schedule was served upon the following persons in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant) on January 18, 2019.

Via EMAIL & FIRST CLASS MAIL

Lauren M. Lepkoski, Esquire
Tori L. Giesler, Esquire
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Dated 1/29/2019

s/Joanna A. Waldron
Joanna A. Waldron, Esquire
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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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**BEFORE THE
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JUDITH D. HENDIN

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2018-3003324

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Motion in Limine 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).

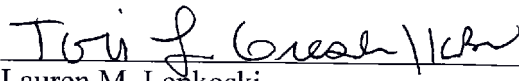
Service by First Class Mail, postage prepaid, as follows:

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Judith D. Hendin
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Dated: August 21, 2019



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