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September 10, 2019

Via E-FILING

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:

We represent Ms. Hendin in the above-referenced matter. Enclosed for filing please find the Complainant's Answer to Motion in Limine of Respondent. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Joanna A. Waldron, Esquire
CURTIN & HEEFNER LLP

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-----------------------------|---|----------------|
| Judith D. Hendin | : | |
| | : | |
| V. | : | C-2018-3003324 |
| | : | |
| Metropolitan Edison Company | : | |

ANSWER TO MOTION IN LIMINE OF RESPONDENT

Complainant Judith D. Hendin, (“Complainant” or “Ms. Hendin”), by and through her attorneys, respectfully files this Answer to the Motion in Limine and states as follows:

I. BACKGROUND

1. Admitted, upon information and belief.
2. Admitted, upon information and belief.
3. Admitted, upon information and belief.
4. Admitted, upon information and belief.
5. Admitted.
6. Admitted.
7. Admitted only as to the Company forwarding the interrogatories and document requests. The remaining averments are denied as state, and involve conclusion of law as to whether the characterization of discovery, and therefore are denied.
8. Denied, as stated. It is admitted that Complainant filed a request at that time unrepresented.
9. Admitted.
10. Admitted.

11. Admitted, upon information and belief.

12. Admitted.

13. Admitted.

14. Admitted. By way of further answer, 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.

15. Admitted.

16. Denied as stated. It is admitted only that Ms. Hendin provided a cover letter on January 29, 2019, to Judge Watson identifying the anticipated expert witnesses, Dr. David Carpenter, with a summary of expected testimony enclosed, and Dr. William G. Kracht, D.O., with written testimony enclosed. By way of further answer still, as set forth in the Company's Exhibit A to the Company's Motion, Ms. Hendin identified witnesses as follows: "Complainant Judith D. Hendin, identifies the following testimony *in addition to Ms. Hendin* to Defendants Metropolitan Edison Company ("Met-Ed" or "Company")" (*emphasis added*).

17. Denied as stated. It is admitted only that a status report was submitted. The status report is a document that speaks for itself.

18. Denied as stated. It is admitted that only that on May 9, 2019, in accordance with the Interim Order Establishing Litigation Schedule, Complainant's counsel submitted a status report. The report is a document that speaks for itself. The remaining characterizations are specifically denied. By way of further answer, Ms. Hendin set forth at that time additional time

was needed to consider the settlement options and associated costs, “before incurring additional litigation costs.” See Exhibit 1. By way of further answer, Ms. Hendin also agreed to a prehearing conference.

19. Denied. It is admitted only that a status report was submitted. The status report is a document that speaks for itself.

20. Admitted.

21. Denied as stated. It is admitted only that the Company representative met with Counsel at Ms. Hendin’s home to discuss potential meter relocation options and Company policies on costs about the same. By way of further answer, at that time, Ms. Hendin’s status as a tenant in a house that has its own, separate meter was discovered and discussed. Ms. Hendin’s landlord was available and participated in some of the discussions about potential meter locations.

22. Denied as stated. It is admitted only that the fact that Ms. Hendin is a tenant was discussed on June 14, 2019.

23. Denied as stated. It is admitted only that the a status report was filed. The second status report is a document that speaks for itself. By way of further answer, on the same day, Ms. Hendin filed a second status report.

24. Denied as stated. By way of further answer, Ms. Hendin served the status report on the Company and Your Honor by email on July 15, 2019. The filing was rejected by the efile system at the Public Utility Commission. By way of further answer still, the filing was resubmitted upon the advice of the Secretary’s Bureau, and was finally accepted as efiled on July 16, 2019. See Exhibit A to the Company’s Motion.

25. Admitted.

26. Denied as stated. It is admitted only that the Motion inadvertently suggested that the written testimony of Ms. Hendin, a lay witness, was provided in January, rather than her identification made. It is specifically denied that Ms. Hendin provided no indication at that time that she expected to testify at her own hearing, as a lay party witness. By way of further answer, the January witness notification identifies Ms. Hendin, a lay witness. Counsel was aware the Ms. Hendin expected to testify because reference to Ms. Hendin as a witness at the hearing was made in her July 15, 2019 status report. By way of further answer, Ms. Hendin's written lay testimony was served on Counsel on September 5, 2019.

27. Denied as stated. It is admitted only that Dr. Carpenter was identified in January. By way of further answer, Company representatives had discussed some meter relocation prior to Ms. Hendin being represented by Counsel.

28. Denied as stated. It is admitted only that the Interim Order was issued on that date. The Interim Order is a document that speaks for itself.

29. Denied as stated. It is admitted only that the counsel for the Company contacted Ms. Hendin's counsel. By way of further answer, the October 18, 2018 Interim Order provided that expert testimony was to be provided in writing, and that the party testimony of a the Complainant as a lay witness was presumed, and not subject the expert testimony written requirement.

30. Admitted, upon information and belief. 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. Denied as stated. By way of further answer, Ms. Hendin's written testimony was served on September 5, 2019.

33. Denied. The allegations of Paragraph 33 are conclusions of law to which no response is required from the answering party, and therefore, said allegations are deemed denied. By way of further response, it would be unfair and prejudicial to Ms. Hendin if she were prevented from testifying and from presenting testimony in this matter.

II. MOTION IN LIMINE

34. Denied. The allegations of Paragraph 34 are conclusions of law to which no response is required from the answering party, and therefore, said allegations are deemed denied.

35. Denied. The allegations of Paragraph 35 are conclusions of law to which no response is required from the answering party, and therefore, said allegations are deemed denied. By way of further answer, it is specifically denied that *In re PECO Energy Co.*, Docket No. A-00110550F0147, (Opinion and Order entered June 22, 2000) as cited by the Company discusses a motion in limine. Rather, the case approves a settlement petition. By way of further answer, as explained in *Commonwealth v. Reese*, "A motion *in limine* is used before trial to obtain a ruling on the admissibility of evidence' and further, it give the trial judge the chance to "weigh potentially prejudicial and harmful evidence before the trial occurs' and "to prevent the evidence from ever reaching the jury." *Commonwealth v. Reese*, 31 A.3d 708 (Pa. Super. 2011)(citations omitted)

36. Denied. The allegations of Paragraph 36 are conclusions of law to which no response is required from the answering party, and therefore, said allegations are deemed denied. By way of further answer, the cited examples do not include the Commission preventing a party from testifying in his or her own case. Further the *Audubon Water Case* does not support

precluding a Complainant from testifying in her own case, and for striking expert testimony.

Unlike the present situation, In *Audubon Water*, not only was a prehearing conference held, but also a public input hearing was held in which lay witnesses provided testimony, without having to provide written testimony prior to testifying. *Pa. Pub. Util. Comm'n v Audubon Water Co.*, 92 Pa. P.U.C. 206 (1999). Further, a party's testimony or expert witness was not stricken in *Phila. Gas Works*; rather, the ALJ exercised discretion to prevent word changes to certain testimony. See *Pa. Pub. Util. Comm'n v Phila. Gas Works*, 98 Pa. P.U.C. 121 (2003).

37. Denied. The allegations of Paragraph 37 are conclusions of law to which no response is required from the answering party, and therefore, said allegations are deemed denied. By way of further answer, a party has the right to present evidence at hearings. 52 Pa. Code § 5.243. The Commission's rules suggest that written testimony is appropriate for expert testimony, not, lay witnesses: "Use of written testimony in Commission proceedings is encouraged, especially in connection with the testimony of expert witnesses." 52 Pa. Code § 5.411.

38. Denied. The allegations of Paragraph 38 are conclusions of law to which no response is required from the answering party, and therefore, said allegations are deemed denied.

39. Denied. The allegations of Paragraph 39 are conclusions of law to which no response is required from the answering party, and therefore, said allegations are deemed denied. By way of further answer, relevant evidence is admissible 52 Pa. Code § 5.401(a).

40. Denied. The allegations of Paragraph 40 are conclusions of law to which no response is required from the answering party, and therefore, said allegations are deemed denied.

41. Denied. The allegations of Paragraph 41 are conclusions of law to which no response is required from the answering party, and therefore, said allegations are deemed denied.

III. NEW MATTER

42. The Company cites no precedent requiring the exclusion of the testimony of the Complainant in a case where no prehearing conference has been held. The cited precedent, *In re PECO Energy Co.*, Docket No. A-00110550F0147, (Opinion and Order entered June 22, 2000), and *Pa. Pub. Util. Comm'n v Audubon Water Co.*, 92 Pa. P.U.C. 206 (1999) are inapposite.

43. The *Audubon Water Case* does not support precluding a Complainant from testifying in her own case, or for striking expert testimony. Unlike the present situation, In *Audubon Water*, not only was a prehearing conference held, but also a public input hearing was held in which lay witnesses provided testimony, without having to provide written testimony prior to testifying. *Pa. Pub. Util. Comm'n v Audubon Water Co.*, 92 Pa. P.U.C. 206 (1999).

44. Further, the Company cites and suggests that a party's testimony or expert witness was not stricken in *Phila. Gas Works*; rather, the ALJ exercised discretion to prevent word changes to certain testimony. See *Pa. Pub. Util. Comm'n v Phila. Gas Works*, 98 Pa. P.U.C. 121 (2003).

45. Here, where the witness in question is the complainant, the purposes of a motion in limine are not applicable. A party's own testimony is neither prejudicial or harmful, nor is there any jury from which the evidence must be excluded. *Commonwealth v. Reese*, 31 A.3d 708 (Pa. Super. 2011)(purpose of motion in limine is to allow the judge to "weigh potentially prejudicial and harmful evidence before the trial occurs" and "to prevent the evidence from ever reaching the jury.").

46. Further, it was understood by Counsel and the Your Honor that Ms. Hendin expected to testify at her own hearing, and the January Interim Order presumed that she would testify.

47. The parties requested a prehearing conference in June, which did not occur. It is likely that certain of these items, such as the Company's alleged lack of knowledge that Ms. Hendin intended to testify at her own hearing, would have been discussed.

48. Lastly, the lack of written testimony from Ms. Hendin has been cured, as testimony was served on the Company September 5, 2019.

WHEREFORE, for the foregoing reasons, Complainant Ms. Hendin respectfully requests that Commission deny the company's Motion in Limine to Exclude Evidence.

Date: September 10, 2019

s/Joanna A. Waldron
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-----------------------------|---|----------------|
| Judith D. Hendin | : | |
| | : | |
| V. | : | C-2018-3003324 |
| | : | |
| Metropolitan Edison Company | : | |

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Complainant's Answer to Motion in Limine of Respondent has been 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).

Via U.S. MAIL and EMAIL

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Via U.S. MAIL and EMAIL

Administrative Law Judge Jeffrey A. Watson
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Piatt Place, Suite 220
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Pittsburgh, PA 15222
jeffwatson@pa.gov

Dated 9/10/2019

s/Joanna A. Waldron
Joanna A. Waldron, Esquire
Pa. ID # 84768
CURTIN & HEEFNER LLP
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Attorney for the Complainant

Exhibit 1


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JOANNA A. WALDRON
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May 9, 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

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


Dear Judge Watson:

We represent Ms. Hendin in the above-referenced matter. Pursuant to the Interim Order Establishing Initial Litigation Schedule dated October 18, 2019, we submit this status update. Ms. Hendin filed testimony from Dr. Kracht and a summary of expected testimony from Dr. Carpenter back in January pursuant to the Interim Order. Ms. Hendin also filed discovery requests on defendants and answered discovery.

In the interest of resolution of this case, Ms. Hendin has requested that the defendant advise her of relocation options available and associated costs. We understand that this process requires defendant to send an engineer to Ms. Hendin's property, which is in the process of being scheduled. Further, the process involves exchange of cost estimates related to the relocation. In light of these discussions, we respectfully request that the procedural schedule in the matter be extended to allow the parties to complete the assessment of the feasibility of meter relocation.

We do not oppose any request to schedule a prehearing conference; however, we request that any such prehearing conference take place after June 30, to permit Ms. Hendin sufficient time to assess options and costs of relocation before incurring additional litigation costs.

Respectfully submitted,


Joanna A. Waldron, Esquire
CURTIN & HEEFNER LLP

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

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2141630.1/53644

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| Judith D. Hendin | : | |
| | : | |
| V. | : | C-2018-3003324 |
| | : | |
| Metropolitan Edison Company | : | |

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Status Update has been 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).

Via EMAIL & FIRST CLASS MAIL

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Dated 5/9/2019

s/Joanna A. Waldron
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PENNSYLVANIA

PUBLIC UTILITY COMMISSION

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