



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 20, 2019

VIA HAND-DELIVERY

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

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Metropolitan Edison Company
Docket No. C-2019-3011675
(I&E Answer to Preliminary Objections)

Dear Secretary Chiavetta:

Enclosed for filing is the original copy of the **Non-Proprietary (Public) Version** of the Answer of the Bureau of Investigation and Enforcement to the Preliminary Objections of Metropolitan Edison Company in the above-captioned matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Prosecutor for the Bureau of
Investigation and Enforcement

Enclosures

cc: As per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2019-3011675
	:	
Metropolitan Edison Company,	:	
Respondent	:	

**ANSWER OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
TO THE PRELIMINARY OBJECTIONS OF
METROPOLITAN EDISON COMPANY
(NON-PROPRIETARY VERSION)**

NOW COMES, the Bureau of Investigation and Enforcement (“I&E” or “Complainant”) of the Pennsylvania Public Utility Commission (“Commission”) by and through its prosecuting attorneys, and files this Answer to the Preliminary Objections of Metropolitan Edison Company (“Respondent” or “Met-Ed”), pursuant to 52 Pa. Code § 5.101(f). In support thereof, I&E avers as follows:

I. INTRODUCTION

On July 22, 2019, I&E filed a Formal Complaint against Respondent at Docket No. C-2019-3011675, alleging that Respondent violated the Pennsylvania Code, National Electric Safety Code (the “NESC”), and Public Utility Code (the “Code”) in connection with a BH4 6 SOL-400 STR.CU clamp that Met-Ed improperly installed on an aluminum conductor steel-reinforced (hereinafter referred to as “Phase C”). The improperly installed clamp caused Phase C to fall to the ground and resulted in a fatal electrocution and property damage that occurred on July 26, 2016 in Easton, Northampton County,

Pennsylvania. In its Complaint, I&E seeks payment of a total civil penalty of \$4,533,000 and also requests that Met-Ed be required to take numerous corrective measures to redress its misconduct and prevent any future harm to the public.

On August 15, 2019, Respondent requested an extension to file an Answer to I&E's Complaint by October 31, 2019. Met-Ed provided to I&E that the basis for such a request was due to a "total causal report" that Met-Ed was preparing related to the July 26, 2016 incident in question and anticipated that the report would be completed by the end of September 2019. Met-Ed's total causal report was to include, *inter alia*, the cause of the incident in question, an analysis of the raw data from the destructive testing performed on Phase C and the three (3) BH4 6 SOL-400 STR.CU clamps connected to Phases A, B, and C, and the date of installation of the clamps.¹

By Secretarial Letter dated August 16, 2019, Commission granted Respondent's request for an extension. On October 31, 2019, Respondent, through counsel, filed an Answer with New Matter and Preliminary Objections to I&E's Complaint at the above docket.² In its Preliminary Objections, Respondent asserts that some of the averments of I&E's Complaint, specifically the allegations and requests for relief on Paragraphs 57, 60, and 63, are barred by the statute of limitations at 66 Pa. C.S. § 3314.

For the reasons stated herein, Met-Ed's Preliminary Objections are meritless and should be rejected. The basis of Met-Ed's Preliminary Objections, which Met-Ed

¹ On November 19, 2019, the day before I&E's Answer to Met-Ed's Preliminary Objections was due, Met-Ed provided to I&E a purported "Engineering Report" regarding the incident in question.

² On November 4, 2019, I&E requested an extension to file an Answer to Met-Ed's Preliminary Objections by November 20, 2019. I&E's request was granted by Secretarial Letter dated November 12, 2019.

erroneously raises under 52 Pa. Code §§ 5.101(a)(1) and (4), is that a *portion* of I&E's requested civil penalty in this matter is barred by the statute of limitations. I&E asserts that because it filed a timely prosecution, as Met-Ed concedes, I&E's civil penalty is not barred. However, accepting, for the sake of the argument, Met-Ed's proposition that a portion of I&E's penalty is barred, I&E would still be entitled to the other portion of its civil penalty, which is not barred, as well as the corrective measures that I&E requests Met-Ed to perform in its Complaint. Because preliminary objections can only be sustained when the law will permit *no recovery*, Met-Ed's Preliminary Objections must be rejected.

II. LEGAL STANDARD

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code §§ 5.101(a)(1)-(7). The grounds for preliminary objections are limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

Commission preliminary objection practice is analogous to Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-000935435 (Order entered July 18, 1994). When considering the preliminary objection, the Commission must determine “whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible.” *P. J. S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002); *Dept. of Auditor General, et al., v. State Employees’ Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003). For an administrative law judge (“ALJ”) to sustain preliminary objections, “it must appear with certainty that the law will permit **no recovery.**” *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (emphasis added). All of the non-moving party’s averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees’ Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

III. ANSWER

Background

1. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same are therefore denied and strict proof thereof demanded at trial. To the extent a response is required, these allegations are denied.
2. Admitted.

3. Admitted in part and denied in part. I&E admits that the Complaint was served upon Met-Ed on July 23, 2019. By way of further response, the Complaint speaks for itself, and any interpretation, quotation, or characterization thereof is denied.

4. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

Standard of Review

5. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

6. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

- 7. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

8. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

Preliminary Objections

9. This is a paragraph of incorporation to which no response is required.

10. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By further response, the Complaint speaks for itself, and any interpretation, quotation, or characterization thereof is denied.

11. Denied. The Complaint speaks for itself, and any interpretation, quotation, or characterization thereof is denied.

12. Denied. The Complaint speaks for itself, and any interpretation, quotation, or characterization thereof is denied.

13. Denied. The Complaint speaks for itself, and any interpretation, quotation, or characterization thereof is denied.

14. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

**ANSWER TO PRELIMINARY OBJECTION NO. 1:
PARAGRAPHS 57, 60, AND 63 OF I&E'S COMPLAINT ARE NOT BARRED BY
66 PA.C.S. § 3314**

15. This is a paragraph of incorporation to which no response is required.

16. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, Respondent seeks that I&E's Complaint be dismissed in its *entirety* on the grounds that a *portion* of I&E's requested relief is barred by Section 3314 of the Code, 66 Pa.C.S. § 3314. I&E asserts that the Commission clearly has jurisdiction over this matter as I&E brought a timely prosecution and the statute of limitations does not bar I&E's requested relief. Met-Ed even concedes that under its own interpretation of 66 Pa.C.S. § 3314, I&E is entitled to a portion of its civil penalty, yet overreachingly seeks dismissal of the entire Complaint. For an ALJ to sustain preliminary objections, "it must appear with certainty that the law will permit **no recovery**." *Stilp*, 910 A.2d at 781 (emphasis added). The Commission can provide I&E with its requested relief in this case. Thus, Met-Ed's objection is irrelevant and should be overruled.

Additionally, Met-Ed erroneously cites to Sections 5.101(a)(1) and (4) of the Commission's regulations relating to lack of Commission jurisdiction and legal insufficiency of a pleading, 52 Pa. Code §§ 5.101(a)(1),(4), respectively, as the grounds for its Preliminary Objections. Although I&E asserts that the statute of limitations does not apply in this case, an applicable statute of limitations argument should be raised in preliminary objections under "impertinent matter" pursuant to 52 Pa. Code § 5.101(a)(2).

17. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response. Section 3314(a) of the Code, 66 Pa.C.S. § 3314(a), speaks for itself, and any interpretation, quotation, or characterization thereof is denied. By way of further response, I&E asserts that the statute of limitations does not apply in this case as I&E brought a timely prosecution and is entitled to relief, as Met-Ed conceded, and therefore, Met-Ed's Preliminary Objections must be overruled. I&E further asserts that 66 Pa.C.S. § 3314(a) does not apply to timely prosecutions that assess civil penalties.

In addition, I&E denies Met-Ed's disreputable, footnote request for its Preliminary Objections to be treated, in the alternative, as a motion for judgment on the pleadings. Here, Met-Ed attempts to "file" its motion for judgment on the pleadings at the same time as its Answer, New Matter, and Preliminary Objections. As stated in 52 Pa. Code § 5.1(a), these filings are pleadings before the Commission and must be closed and/or ruled upon before Met-Ed can file a motion for judgment on the pleadings. Accordingly, Met-Ed's footnote request should be denied.

Furthermore, if Your Honor was so inclined to entertain Met-Ed's footnote request, then Met-Ed's request should be denied because the pleadings clearly show genuine issues of material facts that are appropriately before Your Honor. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. *Darrel Ross v. PECO Energy Co.*, Docket No. C-2008-2060301 (Order entered Oct. 14, 2008). Only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. *Williams v. Lewis*, 466 A.2d 682 (Pa. Super. 1983); *Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. C-20028539 (Order entered December 19, 2003).

Here, I&E asserts that Met-Ed improperly installed and inspected the Phase C clamps which resulted in the fall of the conductor and electrocution of the property owner and property damage. In its Answer, Met-Ed disputes I&E's assertions, suggesting that the Phase C clamp was not improperly installed or inspected. Thus, in the simplest of terms, a genuine issue of fact exists and Met-Ed's request should be denied.

18. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, *Kovarikova v. Pa. American Water Co.*, 2018 Pa. PUC LEXIS 303 (Order entered August 23, 2018) speaks for itself, and any interpretation, quotation, or characterization thereof is denied. By way of further response, I&E submits that the

Kovarikova case is factually different from the instant case. In *Kovarikova*, the complainant's water was shut off in April 2013 by the respondent. The complainant was clearly aware of the shutoff as she had no water and also received, and attached to her formal complaint, an April 10, 2013 reply-letter from the respondent regarding the shutoff. *Id.* Although the complainant was aware of the shutoff, she did not file a formal complaint with the Commission until almost four years after the shutoff on March 3, 2017. *Id.* From the time of the shutoff, the complainant was on notice of the conduct which formed the basis of her complaint. *Id.*

I&E submits that as a practical matter, liability cannot arise if a complainant is not aware that liability exists. In *Wilson*, a case involving a billing dispute, the Commission determined that liability arose not during the time period of the high bill, but on the later date when the complainant was first **notified** of the high bill by a letter from the respondent. *Wilson v. Pennsylvania-American Water Co.*, Docket No. C-20066331 (Order entered July 11, 2007). In the instant case, I&E was unaware of Met-Ed's misconduct until Phase C fell on July 26, 2016. This is the date that liability arose. I&E brought its prosecution within three years from the date that liability arose and therefore, the Commission is not divested of jurisdiction and 66 Pa.C.S. § 3314 does not apply to I&E's prosecution or civil penalty.

19. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, *Kovarikova v. Pa. American Water Co.*, 2018 Pa. PUC LEXIS 303 (Order entered August 23, 2018) speaks for itself, and any interpretation, quotation, or

characterization thereof is denied. By way of further response, I&E asserts that such a quotation is misplaced as Met-Ed concedes under its own interpretation of 66 Pa.C.S. § 3314 that I&E's right to bring an action was not terminated and that the Commission can still order Met-Ed to pay a civil penalty and perform each of the corrective actions detailed in I&E's Complaint.

20. Denied. The Complaint speaks for itself, and any interpretation, quotation, or characterization thereof is denied. By way of further response, the averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, prior to the incident in question, Met-Ed conducted visual inspections of equipment, including Phases A, B, and C, in 2008, 2011, 2013, and 2014 and no defects were purportedly found. I&E was first notified of these inspections on April 3, 2017, when Met-Ed provided revised responses to I&E Data Requests-Set I. *See* I&E Appendix A.³ It is I&E's position that during these inspections, Met-Ed should have identified and corrected improperly installed and defective equipment, the BH4 6 SOL-400 STR.CU clamps, on Phases A, B, and C, but Met-Ed failed to do so.

I&E is not barred by the statute of limitations to bring a claim since it was not aware of these violations until April 3, 2017 and therefore, liability did not arise until that date. I&E generally learns of misconduct only after an accident occurs or in this case, when Phase C fell to the ground. The facts relating to such violations are particularly

³ In prior correspondence, counsel for Met-Ed represented to I&E that, although marked "Confidential," information provided in Met-Ed's responses to I&E Data Requests-Set I, II, and III is **not** confidential.

within the knowledge of Met-Ed and I&E had no reason to believe that Met-Ed was not conducting thorough and proper inspections on its equipment and facilities until I&E has reason to believe otherwise. I&E simply cannot oversee and constantly monitor all of the operations, including the inspections, of a regulated entity.

Additionally, in Paragraph 35 of Respondent's Answer, Met-Ed asserts that it performed a visual and infrared inspection on the subject equipment and facilities on July 25, 2016 and no defects were purportedly found. Met-Ed failed to update its responses to I&E's Data Requests-Set I and provide I&E with this information. Therefore, I&E submits that it intends to file an Amended Complaint to account for this additional violation. Such violation, under Met-Ed's flawed interpretation of 66 Pa.C.S. § 3314, would not be barred as it occurred within the three-year period prior to the filing of I&E's Complaint.

21. Denied. The Complaint speaks for itself, and any interpretation, quotation, or characterization thereof is denied. By way of further response, the averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. I&E denies Met-Ed's attempt to limit I&E's claim to Met-Ed employees and contractors who were not properly trained, equipped, monitored, and supervised in the proper installation of BH4 6 SOL-400 STR.CU clamps, which Met-Ed asserts could have only been installed prior to July 22, 2016 thereby barring I&E's requested relief based thereon. I&E submits that its claim, as stated, pertains not only to the training, equipping, monitoring, and supervising of Met-Ed employees and contractors in the proper installation of such clamps, but also to the training, equipping,

monitoring, and supervising of Met-Ed employees and contractors *in the proper inspection and maintenance of such clamps*, which would apply well beyond July 22, 2016 and therefore, I&E's relief is not barred.

Indeed, in Paragraph 35 of Respondent's Answer, Met-Ed even asserts that it performed a visual and infrared inspection on the subject equipment and facilities on July 25, 2016, which succeeds July 22, 2016, and no defects were purportedly found. Therefore, I&E maintains that such employees and contractors were not properly trained, monitored and supervised. Otherwise, they would have found the defective equipment on July 25, 2016, which was the day before the fatal electrocution occurred.

22. Denied. The Complaint speaks for itself, and any interpretation, quotation, or characterization thereof is denied.

23. Denied: The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

24. Denied. The Complaint speaks for itself, and any interpretation, quotation, or characterization thereof is denied.

25. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, *Kovarikova v. Pa. American Water Co.*, 2018 Pa. PUC LEXIS 303 (Order entered August 23, 2018); *Matenkoski v. Kawon, Inc.*, 1994 Pa. PUC LEXIS 59 (Order entered October 20, 1994); and *Kaufman v. Verizon Pa. Inc.*, 2008 Pa. PUC LEXIS 53 (Order entered November 19, 2008) speak for themselves, and any interpretation, quotation, or characterization thereof is denied. By way of further

response, I&E submits that similar to *Kovarikova*, the *Matenkoski* and *Kaufman* cases are distinguishable from the instant matter as the complainants were aware of the violations yet failed to file complaints within the limitations period. *See Matenkoski v. Kawon, Inc.*, 1994 Pa. PUC LEXIS 59 (Order entered October 20, 1994); *See also Kaufman v. Verizon Pa. Inc.*, 2008 Pa. PUC LEXIS 53 (Order entered November 19, 2008). Additionally in *Matenkoski* and *Kaufman*, the violations of the respondents were not of a continuous and uninterrupted nature. *Id.*

Although Respondent cites to cases where the Commission limits its authority to only imposing penalties for violations that occur three years or less from the date that the Complaint was filed, I&E asserts that the Commission is not bound by a prior court decision that interprets a statutory provision. In *Popowsky v. Pennsylvania Pub. Util. Comm'n*, 910 A.2d 38, 53 (Pa. 2006), the Pennsylvania Supreme Court held that

an agency may revise its policies and amend [such] regulations in interpreting its statutory mandates. Further, past interpretation of a statute, though approved by the judiciary, does not bind the PUC to that particular interpretation.” (quoting *Elite Industries, Inc. v. Pennsylvania Pub. Util. Comm'n*, 832 A.2d 428, 431-32 (Pa. 2003)); *See also Seaboard Tank Lines v. Pennsylvania Pub. Util. Comm'n*, 502 A.2d 762 (Pa. Cmwlth. 1985).

By way of further response, I&E incorporates its Argument, made below, as if fully set forth herein.⁴

26. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of

⁴ For judicial efficiency, I&E incorporates its argument section beginning on Page 15 as if fully set forth herein, instead of including it, in its entirety, in response to Met-Ed's Preliminary Objections at Paragraphs 25-26.

further response, it is I&E's position that the Commission can impose a per-day civil penalty for violations that occur over three years before the complaint is filed under the doctrines of the discovery rule, continuing violations, and equitable estoppel and in matters involving informal complaints. By way of further response, I&E incorporates its Argument, made below, as if fully set forth herein.

27. Denied. The Complaint speaks for itself, and any interpretation, quotation, or characterization thereof is denied.

28. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, I&E asserts that 66 Pa.C.S. § 3314 applies to actions and prosecutions, not civil penalties. Additionally, the Commission is not bound by a prior court decision that interprets a statutory provision. *See Popowsky v. Pa. PUC*, 910 A.2d 38, 53 (Pa. 2006); *Elite Industries, Inc. v. Pennsylvania Pub. Util. Comm'n*, 832 A.2d 428, 431-32 (2003); *Seaboard Tank Lines v. Pennsylvania Pub. Util. Comm'n*, 502 A.2d 762 (Pa. Cmwlth. 1985).

29. Denied. The Complaint speaks for itself, and any interpretation, quotation, or characterization thereof is denied.

30. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. Again, Met-Ed concedes here that I&E's remedy is not totally barred by arguing that the maximum civil penalty that could be imposed under Paragraph 63 of the Complaint is \$4,000, yet Met-Ed seeks to dismiss the entirety of I&E's Complaint. For an ALJ to sustain preliminary

objections, “it must appear with certainty that the law will permit **no recovery.**” *Stilp*, 910 A.2d at 781 (emphasis added).

31. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

32. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

33. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

IV. ARGUMENT

Section 3314 of the Code, 66 Pa.C.S. § 3314, provides in pertinent part, the following:

Section 3314. No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

As Section 3314 of the Code is entitled “Limitation of **actions** and cumulation of remedies,” I&E argues that the statute does apply to the assessment of civil penalties, only actions or prosecutions brought after three years from the date at which the liability arose. 66 Pa.C.S. § 3314(a) (emphasis added). I&E submits that the statute differentiates an “action” from a “prosecution” in that the statute only bars the “recovery” of penalties in actions that are brought more than three years from the date at which the liability arose, not prosecutions that are timely filed and assess civil penalties. If the bar to the recovery of penalties or forfeitures applied equally to prosecutions assessing civil

penalties, then the statute would state “no prosecutions for the recovery of penalties,” which it does not.

In applying the three-year statute of limitations to the instant case, I&E’s prosecution had to be filed on or before July 26, 2019 in order to be timely. Met-Ed agrees that I&E filed a timely complaint yet asserts that a portion of I&E’s requested civil penalty is barred. According to Met-Ed’s flawed interpretation of 66 Pa.C.S. § 3314 and its argument that the Commission cannot impose penalties for violations occurring more than three years prior to the date that the complaint is filed, had I&E waited until July 26, 2019 to file a complaint, I&E’s Complaint would still be considered timely under Section 3314, but I&E’s remedy would amount to almost nothing. Such an interpretation of Section 3314 must be considered incorrect as it impedes, if not forecloses, the remedial~ benefits of the statute and undermines the purpose of Section 3301 of the Code, 66 Pa.C.S. § 3301, (which serves as a deterrence and provides for the imposition of a per day civil penalty for *each and every day’s continuance* of a violation) and 66 Pa.C.S. §§ 331(a), 506 and 52 Pa. Code § 3.113 (which authorizes I&E to conduct an informal investigation). Met-Ed’s interpretation would only serve to incentivize utilities to delay I&E’s investigation and withhold information from I&E since each day that I&E takes to investigate a violation will subtract a day’s worth of penalties that I&E could potentially impose. Met-Ed’s reading of the statute must be incorrect as it only undermines the remedial purposes of 66 Pa.C.S. § 3301 and I&E’s investigation process and enforcement responsibilities.

However, should Your Honor find that I&E's civil penalty or a portion of it is barred by the statute of limitations, then I&E asserts that the discovery rule, the continuing violations doctrine, equitable estoppel, and I&E's informal investigation process all serve to toll the statute of limitations.

The Discovery Rule

Many violations of the Code and Commission regulations, like the misconduct at issue in this case, are inherently difficult to detect. Some Commission regulatory requirements are based on a self-policing honor system. For example, in this case, Met-Ed conducting its own inspections on its equipment and facilities. Whether the inspections have been conducted correctly or conducted at all is not a matter that lends itself to easy detection. Such information relating to the violation is peculiarly within the knowledge of Met-Ed and I&E relies on Met-Ed for correct information. The Commission, nor I&E for that matter, simply cannot oversee and constantly monitor all the operations and innerworkings of a regulated entity. The discovery rule works to toll the statute of limitations during the period the complainant's cause was neither known nor reasonably knowable to the complainant. *See Fine v. Checcio*, 870 A.2d 850 (Pa. 2005).

In *Wilson*, the Commission applied the discovery rule when it determined that liability arose not during the time period of the complainant's high bill (May 21-30, 2002) but on the later date (June 5, 2002) when the complainant was first **notified** of the high bill by a letter from the respondent utility. *Wilson v. Pennsylvania-American Water Co.*, Docket No. C-20066331 (Order entered July 11, 2007).

To say that liability accrues *before* a complainant has or can reasonably be expected to have knowledge of any wrongdoing is patently inconsistent and unrealistic. I&E cannot maintain an action before it knows that it has one. To take away I&E's remedy before the misconduct is ascertainable to I&E makes a mockery of the law.

In the instant case, I&E was unaware of Met-Ed's misconduct until Phase C fell on July 26, 2016 resulting in a fatal electrocution. Prior to this incident, I&E had no way of knowing that such a dangerous and hazardous condition existed. Therefore, July 26, 2016 is the date that liability arose. I&E exercised reasonable diligence to discover the liability, investigate the misconduct, and bring its prosecution within three years from the date that liability arose. I&E has an incentive to act promptly since it bears the burden of proof and is more likely to suffer prejudice from the lack of evidence associated with such claim, and I&E has in fact suffered prejudice in this case as explained further below. Therefore, I&E is entitled to its requested relief.

The Continuing Violations Doctrine

Under the continuing violations doctrine, a complainant may recover for misconduct that falls outside the limitations period on the theory that such misconduct is part of one continuing violation. *See Barra v. Rose Tree Media Sch. Dist.*, 858 A.2d 206, 213 (Pa. Cmwlth. 2004). The United States Supreme Court addressed the continuing violation doctrine in *U.S. v. ITT Continental Baking Co.*, 420 U.S. 223 at 231 (1975) where it held that in a regulatory setting, a violation should be construed as continuing where "the detrimental effect to the public and the advantage to the violator continue and increase over a period of time, and the violator could eliminate the effects of the violation

if it were motivated to do so, after it had begun.” The U.S. Supreme Court further emphasized in *ITT Continental* that the Federal Trade Commission Act should not be interpreted to convert penalties for violations into minor taxes that encourage noncompliance. *Id.* at 232. *See also Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982) (where the U.S. Supreme Court held that all violations are actionable if any occur within the limitations period).

Additionally, the continuing nature and duration of a violation is a specific factor that the Commission must consider when assessing civil penalties in litigated proceedings. *See* 52 Pa. Code § 69.1201. When this factor is applied in a litigated proceeding, it must be applied in a strict fashion. 52 Pa. Code § 69.1201(b). I&E asserts ~~that~~ in order to apply this factor in a strict and consistent fashion, the entire duration of the continuing violation must be considered when assessing a civil penalty in a litigated proceeding, not just a part of it. Otherwise, this undermines the purpose of not only 52 Pa. Code § 69.1201, but also 66 Pa.C.S. § 3301.

In the instant case, the existence of the clamp on Phase C from March 5, 2004 to July 26, 2016 was an uninterrupted and continuing course of conduct. I&E was not aware of such continuing violation until July 26, 2016, the same day that the continuing violation ceased. The existence of this clamp on Phase C caused an ongoing, dangerous, and detrimental effect to the public and resulted in death and property damage. The effects of such violation, death and property damage, were within the complete control of Met-Ed and could have been eliminated had Met-Ed properly installed, inspected, and maintained its equipment and facilities. Should Your Honor find that only a portion of

I&E's requested civil penalty applies as Met-Ed suggests, such a penalty will only disincentivize utilities from adhering to the law because they will be able to escape prosecution for continuing violations. Furthermore, I&E submits that a continuing violation does not present problems of staleness and thus, does not interfere with the purpose of the statute of limitations.

Equitable Estoppel

The doctrine of equitable estoppel also serves to toll the statute of limitations and is based on the theory of estoppel. *Ely v. Pennsylvania American Water Co.*, Docket No. C-20055616 (Order entered July 10, 2006). It provides that a defendant may not invoke the statute of limitations if the defendant misleads the plaintiff or causes the plaintiff to relax his vigilance or deviate from his right of inquiry into the facts through fraud or concealment. *Id.* The doctrine does not require fraud in the strictest sense but rather fraud in the broadest sense, which includes unintentional deception. *Battle v. PECO Energy Co.*, Docket No. C-00003804 (Order entered July 16, 2001).

Throughout the course of its investigation, I&E made repeated attempts, via data requests, electronic mail, written correspondence, and an in-person meeting with in-house counsel for Respondent, to obtain the date of installation of the three clamps installed on Phases A, B, and C. Each time, Met-Ed unilaterally extended a deadline, failed to meet a deadline, or made some excuse in order to avoid having to provide I&E with such information. By letter dated October 4, 2018, I&E made a final attempt to obtain the installation date of the clamps. *See* I&E Appendix B. By letter dated October 10, 2018, in response to I&E's October 4, 2018 letter, Met-Ed alleged that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See I&E

Appendix C.

In addition, Met-Ed's basis for requesting an extension to Answer I&E's Complaint hung on the preparation of a "total causal report" that would allegedly contain the date of installation of the clamps. Met-Ed agreed to provide I&E with such report by the end of September 2019 prior to filing its Answer in this matter. On November 19, 2019, the day before I&E's Answer to Met-Ed's Preliminary Objections was due, Met-Ed provided to I&E a purported "Engineering Report." To date, Met-Ed has not provided I&E with the date of installation of the clamps.⁵

Moreover, in the interest of protecting the public from future harm, I&E requested in I&E Data Requests-Set II dated September 13, 2017, that Met-Ed provide I&E with the location of other BH4 6 SOL-400 STR.CU clamps that were installed on Met-Ed's facilities. On October 13, 2017, Met-Ed responded to I&E that the locations of such clamps are unknown because Met-Ed does not identify them in its mapping system. See I&E Appendix D.⁶ However, in its Answer to I&E's Complaint at Paragraph 25, Met-Ed admits that it inspected conductors between April and July of 2018, located forty (40)

⁵ I&E submits that it intends to file an Amended Complaint to account for Met-Ed's continuing failure to furnish information to the Commission in violation of 66 Pa.C.S. § 505.

⁶ In prior correspondence, counsel for Met-Ed represented to I&E that, although marked "Confidential," information provided in Met-Ed's responses to I&E Data Requests-Set I, II, and III is **not** confidential.

BH4 6 SOL-400 STR.CU clamps that were connected to an aluminum conductor, and brought all forty (40) clamps into compliance by replacing thirty-nine (39) of the clamps with aluminum clamps and reinstalling one (1) clamp with a stirrup. I&E asserts that Met-Ed was under a continuing obligation to furnish this information to I&E by providing revised responses to I&E's data requests. Met-Ed even provided in its October 10, 2018 letter to I&E that it had [REDACTED] [REDACTED] but this is simply not true. *See* I&E Appendix C; *See also* Paragraph 20, *supra* (where I&E asserts that Met-Ed failed to update its revised responses to I&E Data Requests-Set I regarding inspections of Phases A, B, and C). Met-Ed concealed such information from I&E until after I&E filed its Complaint.⁷ Had Met-Ed complied and furnished I&E with this information, I&E would have asserted additional violations against Met-Ed in its Complaint. Again, Met-Ed's interpretation of 66 Pa.C.S. § 3314, if adopted, will only incentivize utilities to conceal information from I&E and intentionally delay I&E's investigation, like Met-Ed has clearly done here, in order to escape prosecution and a maximum penalty.

Informal Complaint Process

Lastly, the statute of limitations can be tolled by the filing of an informal complaint with the Commission. *Duquesne Light Co. v. Pa. PUC*, 611 A.2d 370 (Pa. Cmwlth. 1992). Thus, the period of time within which the Commission's Bureau of Consumer Services ("BCS") investigates a consumer's informal complaint cannot be

⁷ I&E submits that it intends to file an Amended Complaint to account for these additional violations regarding the forty (40) BH4 6 SOL-400 STR.CU clamps.

charged against that consumer. *Id.* at 383. This is consistent with the underlying purpose of the informal complaint process which is to encourage settlements of billing disputes.

Id. at 384.

I&E submits that BCS's informal complaint investigation process is similar to I&E's informal investigation process and should serve to toll the statute of limitations. I&E has the authority to institute an informal investigation of a regulated entity pursuant to 66 Pa.C.S. §§ 331(a), 506 and 52 Pa. Code § 3.113. Once I&E becomes aware of a potential violation of the Code or Commission regulations, I&E must determine whether a factual and legal basis exists for an informal investigation. If the matter warrants an investigation, I&E will conduct the investigation through data and document requests, interviews, and other methods used to obtain information. I&E relies on the information that the respondent utility provides to I&E in response to the data and document requests to make a determination of whether or not a violation has been committed to form the basis for a formal complaint, to settle the matter, or terminate its informal investigation.

In this matter, I&E initiated its informal investigation of Met-Ed on August 16, 2016. *See* I&E Appendix E. I&E asserts that the time it took to conduct its investigation should not be counted against it. Under Met-Ed's interpretation of 66 Pa.C.S. § 3314 and in arguing that Section 3314 applies to civil penalties assessed in a timely prosecution, each day that I&E takes to investigate a violation will subtract a day's worth of penalties that I&E could potentially impose. In other words, under Met-Ed's reading of Section 3314, in order for I&E to assess the maximum civil penalty in a case like this, I&E will have to file its Complaint on the same day that it discovers a violation, leaving no time

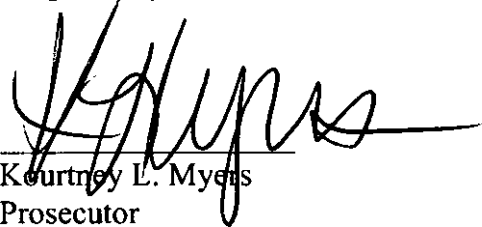
for an investigation to make a determination as to whether or not a violation of the Code or Commission regulations even exists. Such an interpretation must be deemed incorrect as this only undermines I&E's informal investigation process and I&E's investigative and enforcement responsibilities.

Moreover, I&E submits, again, that the Commission is not bound to any prior caselaw that suggests the same interpretation and reading of Section 3314 as that of Met-Ed. See *Popowsky v. Pennsylvania Pub. Util. Comm'n*, 910 A.2d 38, 53 (Pa. 2006).

V. CONCLUSION

WHEREFORE, based upon the reasons stated above, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that the Commission and the Office of Administrative Law Judge dismiss Respondent's Preliminary Objections and sustain I&E's Complaint.

Respectfully submitted,



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Kayla L. Rost
Prosecutor
PA Attorney ID No. 322768

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
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Harrisburg PA 17120
komyers@pa.gov
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mswindler@pa.gov

Dated: November 20, 2019

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
Complainant

v.

Metropolitan Edison Company,
Respondent

Docket No. C-2019-3011675

VERIFICATION

I, Brent W. Killian, Supervisor, Electric Safety Division, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: November 20, 2019



Brent W. Killian
Supervisor, Electric Safety Division
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

APPENDIX A

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Tori L. Giesler, Esq.
(610) 921-6658
(610) 939-8655 (Fax)

CONFIDENTIAL

610-929-3601

April 3, 2017

VIA EMAIL AND FIRST CLASS MAIL

Heidi L. Wushinske, Senior Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Investigation of Metropolitan Edison regarding Incident, including
A fatality, at 250 Royal Manor Road, Easton, PA 18042**

Dear Ms. Wushinske:

Following further review of the data request responses provided by Metropolitan Edison Company ("Met-Ed") on September 6, 2016 to the Bureau of Investigation & Enforcement concerning the above-referenced matter, Met-Ed is hereby providing revised data request responses.

Please contact me with any questions regarding this matter.

Very truly yours,



Tori L. Giesler

dln
Enclosures

c: Richard A. Kanaskie, Chief Prosecutor
Michael L. Swinder, Deputy Chief Prosecutor/Enforcement
Brent W. Killian, Electric Safety Supervisor

*Investigation of Metropolitan Edison regarding Incident, including a fatality,
at 250 Royal Manor Road, Easton, PA 18042*

Order	Type	Asc-start	Description
13880261	PM	10/30/2014	S-THER - PE Subst - RAUBSVILLE
13487333	PM	10/22/2013	S-THER - PE Subst - RAUBSVILLE
13172329	PM	12/03/2012	S-THER - PE Subst - RAUBSVILLE
12906252	PM	03/11/2011	S-THER - PE Subst - RAUBSVILLE
12486612	PM	04/27/2010	S-THER - PE Subst - RAUBSVILLE
12228893	PM	05/14/2009	S-THER - PE Subst - RAUBSVILLE
12071694	PM	10/29/2008	S-THER - PE Subst - RAUBSVILLE
12070105	PM	11/15/2007	S-THER - PE Subst - RAUBSVILLE
11815356	PM	03/16/2006	S-THER - PE Subst - RAUBSVILLE
11434178	PM	08/01/2005	S-THER - PE Subst - RAUBSVILLE
11244079	PM	08/30/2004	S-THER - PE Subst - RAUBSVILLE

Based on reports from the inspector, Met-Ed's infrared inspection includes equipment located just outside the substation. In this case, it includes infrared of Met-Ed pole #70882-48106. No findings were identified for Met-Ed pole #70882-48106 as a result of the infrared inspections.

13. Provide all visual inspection records related to the conductors between Met-Ed pole #70882-48106 and Met-Ed pole #70868-48110 from installation to the present.

Response: The following visual inspections were performed between Met-Ed pole #70882-48106 and Met-Ed pole #70868-48110:

- See Attachments 13A and 13B for the overhead circuit inspection conducted on the Glendon 00030-3 circuit in 2014. Nothing was identified for repair during this inspection.
- See Attachments 13C and 13D for the circuit assessment conducted on the Glendon 00030-3 circuit in 2011.² Although findings were identified during the 2011 circuit assessment, no findings were identified on the conductors between Met-Ed pole #70882-48106 and Met-Ed pole #70868-48110.
- See Attachments 13E and 13F for the circuit assessment conducted on the Glendon 00030-3 circuit in 2013. Nothing was identified for repair during this assessment.
- See Attachments 13G and 13H for the overhead circuit inspection conducted on the Raubsville 00079-3 circuit in 2013. Although findings were identified during the 2013 overhead circuit inspection, no findings were identified on the conductors between Met-Ed pole #70882-48106 and Met-Ed pole #70868-48110.
- An overhead circuit inspection was conducted on the Raubsville 00079-3 circuit in 2008. At the time of the 2008 overhead circuit inspection, only reporting by exception occurred. Although findings were identified during the 2008 overhead circuit inspection, no findings were identified on the conductors between Met-Ed pole #70882-48106 and Met-Ed pole #70868-48110; therefore, no records are available.

² At the time of the 2011 circuit assessment, only reporting by exception occurred.

APPENDIX B

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

October 4, 2018

Tori L. Giesler, Esquire
FirstEnergy
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001

RE: Investigation of Metropolitan Edison Company regarding Incident,
including a fatality, at 250 Royal Manor Road, Easton, PA 18042,
Bp8 No. 2560603

Dear Ms. Giesler,

As you know, the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission") is conducting an investigation of Metropolitan Edison Company ("Met-Ed" or "Company") consistent with Sections 331(a) and 506 of the Public Utility Code, 66 Pa.C.S. §§ 331(a) and 506 and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113. To date, this investigation has focused on the electrocution and fatality that occurred at 250 Royal Manor Road, Easton, PA 18042.

During the course of this investigation, I&E has made numerous information and document requests directed to Met-Ed. I&E is concerned that Met-Ed has not cooperated with I&E's *repeated* requests for information regarding the installation date of the Hubbell BH-4 6 SOL400 STR.CU hot line clamp (hereinafter referred to as "clamp") on the conductor attached to Met-Ed Pole 70882-48106.

For example, by letter dated September 13, 2017, I&E requested that Met-Ed provide I&E with information regarding the date that the clamp was installed. In response, by letter dated October 13, 2017, Met-Ed indicated to I&E that an ongoing investigation was underway as to the installation date of the clamp. By letter dated February 8, 2018, I&E requested that Met-Ed provide an update on the status of Met-Ed's investigation regarding the clamp, a completion report, and if no completion report existed, an explanation as to why, along with an expected completion date. By letter dated March 15, 2018, Met-Ed replied that it is continuing its investigation and in the process of seeking and reviewing information from third-party contractors to determine the installation date of the clamps. Met-Ed further provided that it is targeting to have the information to I&E by the Summer of 2018. On July 2, 2018, by electronic mail, I&E again contacted Met-Ed and requested that it provide I&E with an update on the investigation regarding the installation date of the clamp. That same day, Met-Ed replied

that it "will loop back shortly." To date, Met-Ed has not complied with I&E's repeated requests for information.

Section 505 of the Public Utility Code, 66 Pa.C.S. § 505, requires every public utility to furnish any and all information to the Commission, as the Commission may require, in an investigation. Similarly, Section 57.198(m) of the Commission's regulations, 52 Pa. Code § 57.198(m), requires an electric distribution company to maintain records of its inspection and maintenance activities sufficient to demonstrate compliance with its distribution facilities inspection, maintenance, repair and replacement programs and to make those records available to the Commission upon request within 30 days. Examples of "sufficient records" include "maintenance, repair and replacement receipts from independent contractors showing when and what type of inspection, maintenance, repair, or replacement work was done." 52 Pa. Code § 57.198(m)(2).

It is I&E's position that Met-Ed should be in possession of this information and should have furnished such information to I&E upon its first request, which was over a year ago. Therefore, this letter serves as I&E's final attempt to obtain this information before initiating a prosecution in this matter. Please provide Met-Ed's response to the aforementioned inquiry to the undersigned by Wednesday, October 10, 2018.

Thank you for your immediate attention to this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Kourtney L. Myers
Prosecutor

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P. O. Box 3265
Harrisburg, PA 17105-3265
(717) 705-4366
komyers@pa.gov

cc: Brent W. Killian, Electric Safety Supervisor

APPENDIX C

PROPRIETARY

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EXPL. DIV. RESEARCH
SECRETARY'S BUREAU

APPENDIX D

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Tori L. Giesler, Esq.
(610) 921-6658
(610) 939-8655 (Fax)

CONFIDENTIAL

610-929-3601

October 13, 2017

VIA EMAIL AND FIRST CLASS MAIL

Heidi L. Wushinske, Senior Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Investigation of Metropolitan Edison regarding Incident, including
A fatality, at 250 Royal Manor Road, Easton, PA 18042, bp8#2560603
I&E Set II**

Dear Ms. Wushinske:

Enclosed please find Metropolitan Edison Company's ("Met-Ed") responses to the Bureau of Investigation and Enforcement's data requests, Set II, directed to Met-Ed on September 13, 2017 in the above-referenced matter.

Please contact me with any questions regarding this matter.

Very truly yours,



Tori L. Giesler

dln
Enclosures

c: Richard A. Kanaskie, Chief Prosecutor
Brent W. Killian, Electric Safety Supervisor
Glenn Weaver, Electric Safety Officer

*I&E Set II - Investigation of Metropolitan Edison regarding incident, including a fatality,
at 250 Royal Manor Road, Easton, PA 18042*

14. Please see the attached Photos, Photos 2 and 3, which show a Hubbell BH4 SOL-400 STR.CU overhead primary hot line clamp that was attached to the failed conductor at the point where it failed and fell to the ground. The following questions reference these photos:
- Please provide the date that the Hubbell BH4 SOL-400 STR.CU overhead primary hot line tap clamp was installed on the failed conductor attached to Met-Ed Pole #70822-48106, including the Met-Ed work order and daily job report submitted for the installation.
 - Please provide the manufacturer's installation instructions, effective at the time of installation, for the Hubbell BH4 SOL-400 STR.CU overhead primary hot line tap clamps.
 - Please provide the manufacturer's recommended use, at the time of installation, for the Hubbell BH4 SOL-400 STR.CU overhead primary hot line tap clamps.
 - Please provide Met-Ed's procedure, effective at the time of installation, for the use and installation of Hubbell BH4 SOL-400 STR.CU overhead primary hot line tap clamps.
 - Please provide all locations where Hubbell BH4 SOL-400 STR.CU overhead primary hot line tap clamps have been installed on transmission, sub-transmission, and distribution lines in all facilities owned and operated by Met-Ed. Do not include the use of temporary grounding.

Response:

- The date of installation for the Hubbell BH4 hot line clamp shown in Photos 2 and 3 is currently unknown but remains under investigation.
- See I&E Set II Attachment 14A for the manufacturer's current installation instructions. Because the date of installation is currently unknown, it is not clear if these instructions would have applied at the time of installation.
- See the response to question 14b.
- Because the date of installation is currently unknown, it is not known what Met-Ed's installation and use procedures would have been.
- The locations of where all Hubbell BH4 hot line clamps are installed is not known. Clamps are not identified in Met-Ed's mapping system because they are considered a small piece of equipment assumed to be part of the infrastructure. For example, a clamp is not unlike nuts and bolts.

15. Please provide Met-Ed's chain of custody policy, including any forms and procedures for items secured as evidence.

Response: See I&E Set II Attachment 15A for the Claims Evidence Retention Policy. See I&E Set II Attachment 15B for a blank evidence retention log. See I&E Set II Attachment 15C for an image of a blank evidence tag.

16. Please provide the chain of custody form that was used for any and all items secured as evidence in the Williams Township fatality that occurred on July 26, 2016, including, but not limited to, the hot line clamps and all other evidence present at the April 26, 2017 Northampton County Coroner's meeting.

APPENDIX E

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Tori L. Giesler, Esq.
(610) 921-6658
(610) 939-8655 (Fax)**CONFIDENTIAL**

610-929-3601

September 6, 2016

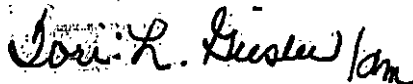
VIA EMAIL AND FIRST CLASS MAILHeidi L. Wushinske, Senior Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265**Re: Investigation of Metropolitan Edison regarding Incident, including
A fatality, at 250 Royal Manor Road, Easton, PA 18042**

Dear Ms. Wushinske:

Enclosed please find Metropolitan Edison Company's ("Met-Ed") responses to the Bureau of Investigation and Enforcement's data requests directed to Met-Ed on August 16, 2016 in the above-referenced matter.

Please contact me with any questions regarding this matter.

Very truly yours,



Tori L. Giesler

dlm
Enclosuresc: Richard A. Kanaskie, Chief Prosecutor
Michael L. Swinder, Deputy Chief Prosecutor/Enforcement
Brent W. Killian, Electric Safety Supervisor

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,

v.

Metropolitan Edison Company

:
:
:
:
:
:

Docket No. C-2019-3011675

CERTIFICATE OF SERVICE

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

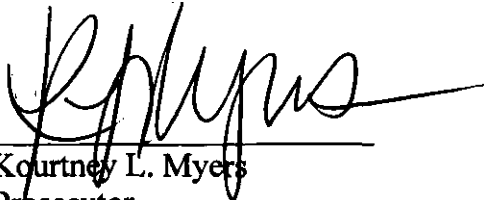
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Dated: November 20, 2019