**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau :

Of Investigation & Enforcement : :

v. : C-2019-3011675

:

Metropolitan Edison Company :

**INTERIM ORDER**

**DISMISSING PRELIMINARY OBJECTIONS**

On July 22, 2019, the Bureau of Investigation and Enforcement (BIE) filed a formal complaint against Metropolitan-Edison Company (Met-Ed), alleging that Met-Ed violated certain provisions of the Public Utility Code, regulations and National Electric Safety Code related to the company’s installation and/or maintenance of certain facilities. BIE alleges that Met-Ed’s failure to property maintain its facilities caused an electricity line to fall to the ground and resulted in a fatal electrocution and property damage on July 26, 2016, in Easton, Pennsylvania. As relief BIE seeks civil penalties in the amount of $4,533,000 and numerous corrective measures.

Met-Ed filed an answer and new matter along with preliminary objections on October 31, 2019.[[1]](#footnote-1) Met-Ed denies the material allegations of the complaint, and raises affirmative defenses in its new matter. BIE filed a response to the preliminary objections and answer to the new matter on November 20, 2019.[[2]](#footnote-2)

By notice dated January 9, 2020, this matter was assigned to me and scheduled for a prehearing conference on March 3, 2020. As explained below, Met-Ed’s preliminary objections will be dismissed. Met-Ed and BIE raise important issues related to the interpretation of Section 3314, which are better decided when both parties have had an opportunity to develop a legal analysis in the context of the factual record.

Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.[[3]](#footnote-3) In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.[[4]](#footnote-4) Any doubt must be resolved in favor of the non‑moving party by refusing to sustain the preliminary objections.[[5]](#footnote-5) All of the non-moving party’s averments in the complaint must be viewed as true for purposes of deciding the preliminary objections.[[6]](#footnote-6) Only those facts specifically admitted may be considered against the non-moving party.[[7]](#footnote-7) A preliminary objection which seeks dismissal of a pleading will only be granted where relief is clearly warranted and free from doubt.[[8]](#footnote-8)

Met-Ed argues that the complaint should be dismissed because the relief sought by BIE is barred by Section 3314 of the Public Utility Code.[[9]](#footnote-9) Specifically, Met-Ed argues that the civil penalties requested by BIE in Paragraphs 57, 60 and 63 of the complaint are calculated based on time periods earlier than three years before BIE filed its complaint. BIE counters that a strict application of Section 3314 should not bar its request for relief under a variety of legal theories.

Section 3314 of the Public Utility Code[[10]](#footnote-10) sets forth a statute of limitation for proceedings before the Commission:

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 therefore arose, except as otherwise provided in this part.

Generally, the Commission has held that Section 3314 “terminates the right to bring an action as well as any remedy the Commission may order.”[[11]](#footnote-11) However, as explained by the Pennsylvania Supreme Court, the law recognizes certain exceptions which toll the statute of limitations, such as the discovery rule and the doctrine of fraudulent concealment.[[12]](#footnote-12) That court also instructed that “a statute of limitations, like all statutes, must be read with reason and common sense; that its application to a given set of circumstances, must not be made to produce something that the General Assembly could never have intended; and that its interpretation must be guided by the presumption in the Statutory Construction Act that the legislature does not intend a result that is absurd, impossible of execution or unreasonable.”[[13]](#footnote-13)

While the Commission has not explicitly adopted the Pennsylvania Supreme Court’s instruction for interpreting statutes of limitations, Commission decisions reflect the principles set forth by the court. The Commission has not articulated a “discovery rule” per se, but it has noted in consumer cases that the statute of limitations begins to run when a complainant is aware of a cause of action.[[14]](#footnote-14) At least one Commission decision discusses the doctrine of equitable estoppel to toll the application of a statute of limitations.[[15]](#footnote-15) Another decision found that where a complainant alleged that a utility failed to remedy a service complaint for a number of years, a violation which continued until the utility acted, a civil penalty was permitted.[[16]](#footnote-16)

The cases cited by Met-Ed to support its preliminary objections, do not address the application of an exception to the statute of limitation that may be applicable to the circumstances here. These cases are consumer complaints where a consumer was aware of when water service became unreliable[[17]](#footnote-17) or was terminated.[[18]](#footnote-18)

BIE’s complaint raises issues of fact and law beyond the factual circumstances in these cases. Met-Ed has not had an opportunity to address BIE’s argument that exceptions to the statute of limitations should apply to the alleged facts here. Therefore, Met-Ed’s preliminary objections will be denied as the right to prevail is not clearly warranted at this point in the proceedings.

THEREFORE,

IT IS ORDERED

That the preliminary objections of Metropolitan Edison Company filed on October 31, 2019, are dismissed.

Date: January 16, 2020 /s/

Mary D. Long

Administrative Law Judge

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1. By Secretarial Letter dated August 16, 2019, Met-Ed was granted an extension of time to file its answer.  
    [↑](#footnote-ref-1)
2. By Secretarial Letter dated November 12, 2019, BIE was granted an extension of time to file its response. [↑](#footnote-ref-2)
3. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).   
    [↑](#footnote-ref-3)
4. *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm’n*, 669 A.2d 1105 (Pa. Cmwlth. 1996).  
    [↑](#footnote-ref-4)
5. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).   
    [↑](#footnote-ref-5)
6. *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation and Natural Resources*, 909 A.2d 413 (Pa.Cmwlth. 2006), *aff’d per curium*, 924 A.2d 1203 (Pa. 2007).  
    [↑](#footnote-ref-6)
7. *Ridge v. State Employees’ Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).   
    [↑](#footnote-ref-7)
8. *Interstate Traveller Services, Inc. v. Pa. Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Application of K&F Medical Transport*, LLC, PUC Docket No. A-2008-2020353 (Initial Decision dated April 25, 2008).  
    [↑](#footnote-ref-8)
9. 66 Pa.C.S. § 3314.  
    [↑](#footnote-ref-9)
10. 66 Pa.C.S. §3314(a). [↑](#footnote-ref-10)
11. *Kovarik v. Pennsylvania American Water Company,* Docket No. C-2017-2592131 (Opinion and Order entered August 23, 2018).  
     [↑](#footnote-ref-11)
12. *Fine v. Checcio*, 870 A.2d 850 (Pa. 2005).  
     [↑](#footnote-ref-12)
13. *Id.* at 860.  
     [↑](#footnote-ref-13)
14. *Wilson v. Pennsylvania American Water*, Docket No. C-20066331 (Opinion and Order entered July 11, 2007)(statute begins to run when complainant became aware of a potential dispute); *see also* cases applying the limitation at 66 Pa.C.S. §1312 to refunds.  
     [↑](#footnote-ref-14)
15. *Ely v. Pennsylvania American Water* Company, Docket C-20055616 (Opinion and Order entered July 10, 2006).  
     [↑](#footnote-ref-15)
16. *Del Vecchio v. PPL Electric Utilities Corporation*, Docket Z-01464793 (Opinion and Order entered September 13, 2005).  
     [↑](#footnote-ref-16)
17. *Matenkoski v. Kawon, Inc.*, Docket C-00935089 (Opinion and Order entered October 20, 1994).  
     [↑](#footnote-ref-17)
18. *Kovarik v. Pennsylvania American Water Company,* C-201702592131 (Opinion and Order entered August 23, 2018). [↑](#footnote-ref-18)