

Tori L. Giesler, Esq.
(610) 921-6658
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January 16, 2020

VIA ELECTRONIC FILING

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

Re: Gilbert M. Martinez v. Metropolitan Edison Company
Docket No. C-2019-3013798

Dear Secretary Chiavetta:

Enclosed please find the Motion to Compel 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

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Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GILBERT M. MARTINEZ

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2019-3013798

NOTICE TO PLEAD

TO: Gilbert M. Martinez

Pursuant to 52 Pa. Code § 5.102(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion to Compel of Metropolitan Edison Company within **five (5) 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.

File with:

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

With a copy to:

Administrative Law Judge Andrew Calvelli
Pennsylvania Public Utility Commission
Office of the Administrative Law Judge
400 North Street
Harrisburg, PA 17120

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

Date: January 16, 2020



Tori L. Giesler, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GILBERT M. MARTINEZ

:

:

v.

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Docket No. C-2019-3013798

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METROPOLITAN EDISON COMPANY

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**MOTION OF METROPOLITAN EDISON COMPANY TO COMPEL RESPONSES TO
INTERROGATORIES AND DOCUMENT REQUESTS**

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 §§ 5.371-5.372, hereby files this Motion to Compel Gilbert M. Martinez (“Complainant”) to provide full and complete responses to interrogatories and document requests issued by the Company on December 11, 2019. In support thereof, the Company avers as follows:

I. BACKGROUND

1. On October 25, 2019, the Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding his electric service at 1706 Cotton Street, Reading, Pennsylvania 19606, which was electronically served on the Company the same day.

2. On November 14, 2019, the Company filed its Answer and New Matter denying the material allegations in the Formal Complaint. On that same day, the Company also filed Preliminary Objections to the Formal Complaint.

3. On November 25, 2019, the Complainant filed a Preliminary Objection Response and Motion for Default Judgment which did not contain any notice to plead.

4. On December 2, 2019, on Call-In Telephone Pre-Hearing Conference Notice was issued which scheduled a prehearing conference for January 22, 2020 before Administrative Law Judge (“ALJ”) Andrew Calvelli.

5. On December 11, 2019, in accordance with 52 Pa. Code § 5.341, the Company forwarded to the Complainant interrogatories and document requests (“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. A full copy of the Company’s Discovery Requests is attached as Exhibit A.

6. On December 26, 2019, ALJ Calvelli issued an Order which denied the Company’s Preliminary Objections.

7. On December 20, 2019, the Complainant contacted counsel for the Company and left a voicemail message requesting a callback. On December 30, 2019, due to Company counsel having been out of the office, the Complainant again contacted counsel for the Company and left a voicemail message stating that there was no need for a return telephone call and that he would not be responding to the Company’s Discovery Requests as they are untimely and “[we] have already passed the pleading stage.”

8. The Complainant did not file any objection to the Discovery Requests and has not provided any responses or the requested documents by the due date. To date, no response to the Discovery Requests has been received from the Complainant.

II. MOTION TO COMPEL

9. The Commission's regulations permit the discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa. Code § 5.321(c).

10. Generally speaking, this Commission applies a standard of relevance which is less restrictive than that required by parties to present information into the evidentiary record. It is not grounds for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

11. Discovery may be obtained regarding any matter relevant to the subject matter. Relevant evidence is evidence that tends to make an act at issue more or less probable. Moreover, evidence is relevant if it advances the inquiry in some degree and, thus, has probative value. Although the law does not furnish an absolute test of relevancy, the Pennsylvania Supreme Court follows a two-part analysis for determining relevance. In *Commonwealth v. Stewart*, 461 Pa. 274, 336 A.2d 282 (1975), the Court held that "[i]t must be determined first if the inference sought to be raised by the evidence bears upon a matter at issue in this case and, second, whether the evidence renders the desired inference more probable than it would be without the evidence. *Id.* at 284.

12. The information sought here by the Company is relatively simple and straightforward. It is directly relevant and material to the issues raised by the Complainant in his Formal Complaint. The Company is entitled to the requested information to enable it to fully investigate what information the Complainant relied on to make the specific and detailed allegations he did in his Formal Complaint. If the Complainant needed more time to answer the Company's Discovery Requests, he could have contacted the Company to request an extension.

13. The Commission's Regulations at 52 Pa. Code § 5.371 address the consequences of a participant's failure to comply with the Commission's discovery regulations. Section 5.371 provides that:

(a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:

(1) A party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter.

14. Further, 52 Pa. Code § 5.372 provides that the presiding officer may impose appropriate sanctions upon a party found to be found in violation of the obligations set forth in the Commission's Regulations.

15. As a result of the Complainant's failure to provide complete responses to the Company's Discovery Requests, which demonstrates his lack of cooperation and willingness to participate in this proceeding as required under the Commission's regulations, the Formal Complaint in this proceeding should be dismissed in its entirety.

16. The Company requests that the Complainant be directed to provide full and complete responses to the Discovery Requests to be received by the undersigned counsel for the Company within five business days after entry of an Order Granting the Motion to Compel.

17. In the event the Complainant is directed by the Commission to respond to the Company's Discovery Requests, but fails to, the Company respectfully requests that the Complaint against the Company be dismissed in its entirety.

WHEREFORE, Metropolitan Edison Company respectfully requests that the Commission issue an Order compelling the Complainant to fully and completely respond to the Discovery Requests such that the responses are received by counsel for the Company no later than five business days after entry of an Order on the Motion to Compel. Further, in the event the

Complainant does not comply with the Order directed by the Commission and fails to respond to the Company's Discovery Requests, the Company respectfully requests that the Commission dismiss in its entirety the Formal Complaint of Gilbert M. Martinez.

Respectfully submitted,

Dated: January 16, 2020

Tori L. Giesler / KBW

Lauren M. Lepkoski

Attorney No. 94800

Tori L. Giesler

Attorney No. 207742

FirstEnergy Service Company

2800 Pottsville Pike

P.O. Box 16001

Reading, Pennsylvania 19612-6001

(610) 921-6203

(610) 921-6658

llepkoski@firstenergycorp.com

tgiesler@firstenergycorp.com

Counsel for Metropolitan Edison Company



2800 Pottsville Pike
PO Box 16001
Reading, PA 19612-6001

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

December 11, 2019

VIA FIRST CLASS MAIL

Gilbert Martinez
1706 Cotton Street
Reading, PA 19606

Re: Gilbert Martinez v. Metropolitan Edison Company
Docket No. C-2019-3013798

Dear Mr. Martinez:

Enclosed please find the Interrogatories (Set I) to Gilbert Martinez. Pursuant to 52 Pa. Code §§ 5.341 and 5.349, *et seq.*, your answers are due within twenty days of service of this letter (December 31, 2019). In addition, any objections are due within ten days of service of this letter (December 23, 2019). This document has been served as indicated within the Certificate of Service.

Very truly yours,

Tori L. Giesler

Enclosures

c: As Per Certificate of Service
The Honorable Andrew Calvelli, Public Utility Commission (Cover Letter and Certificate)
Rosemary Chiavetta, Esq., Public Utility Commission (Cover Letter and Certificate)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GILBERT MARTINEZ :
 :
 v. : **Docket No. C-2019-30013798**
 :
METROPOLITAN EDISON COMPANY :

**INTERROGATORIES OF METROPOLITAN EDISON COMPANY TO GILBERT
MARTINEZ, SET I**

Metropolitan Edison Company hereby propounds these Interrogatories (Set I) to Gilbert Martinez (the "Complainant"). Telephone or other contact concerning availability and timing of formal responses is encouraged. The answer to each interrogatory should be started on a new page. The answers should restate the question asked and indicate the person(s) supplying the information.

Pursuant to 52 Pa. Code § 5.342, you must send your answers to me within 20 days (December 31, 2019) and objections within 10 days (December 23, 2019). Your answers and objections should not be filed with the Pennsylvania Public Utility Commission. You should only file the cover letter and certificate of service, with the Commission's Secretary Rosemary Chiavetta and send a copy to Administrative Law Judge Andrew M. Calvelli. If you have any objection to any of the interrogatories, please identify the interrogatory and state your objection in full as to why you should not have to answer it. Any objection not raised within the 10-day period provided for by 52 Pa. Code § 5.342(c) will be deemed waived and you will not be permitted to raise the objection at a later time.

Dated: December 11, 2019

**INTERROGATORIES OF METROPOLITAN EDISON COMPANY TO GILBERT
MARTINEZ, SET I**

1. Please list the specific issues you intend to raise at the hearing in this proceeding.
2. Please provide the following information for all witnesses you intend to call to testify at the hearing in this proceeding.
 - a. Provide the full name of the witness.
 - b. Provide the address and telephone number of the witness.
 - c. Provide the title or position held by the witness.
 - d. Provide the educational background of the witness.
 - e. Provide the employment background of the witness.
 - f. Provide the scope of the testimony for the witness.
3. Will any witness identified in your response to question 2 be offered as an expert?
 - a. If yes, please provide the curriculum vitae of the witness and a summary of the testimony the expert witness is expected to provide.
4. Do you intend to offer yourself as an expert witness on any of the specific issues you intend to raise at the hearing in this proceeding? If yes, please provide the following information for each specific issue:
 - a. Please describe any education you have received that you believe qualifies you as an expert witness on the specific issue.

- b. Please describe any employment history and/or experience that you believe qualifies you as an expert witness on the specific issue.
- c. Do you have any certifications that qualify you as an expert on the specific issue? If yes, please provide information about how the certification is obtained and when you obtained the certification.
- d. Please describe any other training and/or experience that you believe qualifies you as an expert on the specific issue.
- e. Please provide a copy of your curriculum vitae and a summary of any expert testimony you are expecting to provide.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GILBERT MARTINEZ

v.

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Docket No. C-2019-3013798

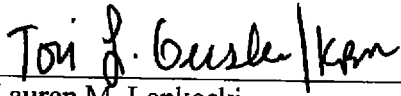
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Interrogatories of Metropolitan Edison Company to Gilbert Martinez 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:

Gilbert Martinez
1706 Cotton Street
Reading, PA 19606

Dated: December 11, 2019



Lauren M. Lepkoski
Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
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Reading, Pennsylvania 19612-6001
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**BEFORE THE
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v.

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Docket No. C-2019-3013798

METROPOLITAN EDISON COMPANY

CERTIFICATE OF SERVICE

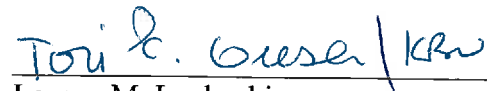
I hereby certify that I have this day served a true copy of the Motion to Compel of Metropolitan Edison Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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

Gilbert M. Martinez
1706 Cotton Street
Reading, PA 19606
Gilmarcus09@gmail.com

Administrative Law Judge Andrew Calvelli
Pennsylvania Public Utility Commission
Office of the Administrative Law Judge
400 North Street
Harrisburg, PA 17120
acalvelli@pa.gov

Dated: January 16, 2020



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