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February 10, 2020

VIA ELECTRONIC FILING

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

Re: Donna DeSanto Ott v. Metropolitan Edison Company
Docket No. C-2018-3005829

Dear Secretary Chiavetta:

Enclosed please find the Petition for Protective Order 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**

DONNA DESANTO OTT

V.

METROPOLITAN EDISON COMPANY

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Docket No. C-2018-3005829

PETITION FOR PROTECTIVE ORDER

Metropolitan Edison Company (the “Company” or “Met-Ed”) files this Petition pursuant to 52 Pa. Code § 5.423(b) for the entry of a Protective Order, in the form attached hereto as Exhibit A, to limit the disclosure of confidential and proprietary information (Confidential Information) produced in discovery or submitted for the record by any party in the above-referenced matter. In further support of this Petition, Met-Ed states as follows:

1. On November 6, 2018, Donna DeSanto Ott (“Complainant”) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding her electric service at 111 Meadowlark Road, Reading, Pennsylvania 19606, which was electronically served on the Company on November 7, 2018.

2. On November 27, 2018, 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. By letter dated October 22, 2018, the Complainant filed a reply to the Company’s Answer and New Matter.

4. The Formal Complaint was assigned to Administrative Law Judge (“ALJ”) Jeffrey A. Watson and on November 21, 2018, ALJ Watson dismissed the Company’s Preliminary Objections.

5. On December 7, 2018, the Complainant filed a letter requesting an extension of time to answer the Company's New Matter and Preliminary Objections until January 7, 2019.

6. On December 14, 2018, a Motion Judge Assignment Notice was issued assigning ALJ Watson to this proceeding.

7. On January 8, 2019, the Complainant filed a letter requesting a second extension of time to answer the Company's New Matter and Preliminary Objections until "at least February 15."

8. On January 8, 2019, ALJ Watson issued an Interim Order which granted the Complainant's request for an extension of time to reply to the Company's Preliminary Objections and New Matter and permitting the Complainant to file a responsive pleading to the Company's Preliminary Objections, Answer and New Matter, and serve copies of the response to counsel for the Company and the undersigned presiding officer, not later than February 15, 2019.

9. On January 8, 2019, ALJ Watson issued an Interim Order denying the Company's Preliminary Objections.

10. On January 8, 2019, an Interim Order Establishing Initial Litigation Schedule was issued which set forth the schedule for discovery, the identification of witnesses, and filing of motions in this proceeding.

11. On January 24, 2019, in accordance with the Interim Order Establishing a Litigation Schedule, the Company provided notice and summaries of testimony for its factual and expert witnesses.

12. On January 29, 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.

13. The Complainant failed to file any response to the Company's Answer and New Matter or Preliminary Objection by February 15, 2019.

14. 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 or telephone call has been received from the Complainant.

15. On February 8, 2019, the Complainant filed a letter stating that she needed to withdraw the Formal Complaint due to health issues and stating that she may pursue an "ADA complaint in the future."

16. Counsel for the Company contacted the Complainant via telephone regarding her desire to withdraw the Formal Complaint and offered to file a certified statement which would state her desire to not pursue the Formal Complaint and would close the Formal Complaint docket with the Commission. The Complainant indicated she was not interested in such a filing.

17. On February 18, 2019, the Complainant filed a letter stating that she is "not in any way satisfied with the outcome of being forced to accept Met-Ed's smart meter" and therefore she cannot sign a "Certificate of Satisfaction." The Complainant goes on to state that she is abandoning the Formal Complaint due to her worsening health due to the smart meter installation and the "difficult" formal complaint process. Further, the Complainant details health issues and renovations/alterations she has made to her home.

18. On March 1, 2019, in accordance with the Interim Order Establishing a Litigation Schedule, the Company provided notice and summaries of testimony for its factual and expert witnesses.

19. Also on March 1, 2019, the Company filed a Motion to Dismiss for the Complainant's failure to provide responses to the Discovery Requests and failure to provide notification of her anticipated witnesses.

20. On March 4, 2019, the Complainant filed an Answer to the Company's Motion to Dismiss.

21. On March 25, 2019, an Interim Order Scheduling Prehearing Conference was issued as well as a Call-In Telephone Pre-Hearing Conference Notice.

22. On April 29, 2019, an Interim Order Cancelling Prehearing Conference was issued as well as a Cancel Reschedule Call In Telephonic Prehearing Conference Notice.

23. On April 30, 2019, the Company submitted a status report in accordance with the Interim Order.

24. On May 9, 2019, a prehearing conference was held. The Complainant and counsel for the Company appeared and participated. The Complainant stated that she desired to obtain representative and had been in contact with an attorney. The Complainant was directed to have her attorney contact counsel for the Company so that the prehearing conference could be rescheduled.

25. On May 10, 2019, the Complainant filed a letter regarding the rescheduled prehearing conference.

26. On May 13, 2019, an Interim Order Rescheduling Prehearing Conference from May 9 and Requiring Attendance at Conference was issued as well as a Cancel Reschedule Call In Telephonic Prehearing Conference Notice.

27. On May 16, 2019, the Complainant's attorney filed a request for a continuance of the prehearing conference.

28. On May 21, 2019, a Cancellation Notice for the scheduled prehearing conference was issued.

29. On May 28, 2019, a Call In Telephonic Prehearing Conference was issued.

30. On June 17, 2019, a prehearing conference was held in which counsel for the Complainant as well as counsel for the Company participated.

31. Also on June 17, 2019, the Complainant filed correspondence from her physician.

32. On June 25, 2019, counsel for Complainant filed his entry of appearance.

33. On December 31, 2019, ALJ Watson issued an Interim Order Denying Complainant's Request to Withdraw Complaint without Prejudice. The Interim Order held the Company's Motion to Dismiss in abeyance and directed, in part, that the parties shall confer on or before January 31, 2020 and attempt to agree or stipulate to the terms of a protective order to address the disclosure and use of discovery materials and other sensitive information in this proceeding. Further, the parties were directed to submit a stipulated protective order or, in the event an agreement is not reached by the parties, either party may submit a request for a protective order and a proposed protective order on or before February 10, 2020.

34. The Company's Discovery Requests request the production of Confidential Information or documents containing Confidential Information. Additionally, in the course of this proceeding, the Company and Complainant may be requested to produce further information and documents that may be considered confidential. Accordingly, the entry of a Protective Order covering Confidential Information produced by any party in response to discovery and Confidential Information that parties may seek to introduce in evidence will facilitate the orderly and efficient progress of this proceeding.

35. The form of the Protective Order attached as Exhibit A is the same or similar to Protective Orders regularly entered in other proceedings for the Companies and other utilities.¹

¹ *E.g., Pa. P.U.C. v. Metropolitan Edison Company*, Docket No. R-2016-253749, et al., Protective Order (June 22, 2016) (Administrative Law Judge Mary D. Long).

36. On January 8, 2020, in an effort to comply with ALJ Watson's directive in the Interim Order issued December 31, 2019, the Company sent a copy of the proposed protective order to the Complainant and her attorney for review.

~~37. On February 7, 2020, counsel for the Complainant advised via electronic mail that he was in agreement with the proposed protective order.~~

38. The Company avers that the proposed protective order would protect that information from production or use outside the bounds of this docketed proceeding.

WHEREFORE, for all of the foregoing reasons, this Petition should be granted and a Protective Order in the form attached hereto as Exhibit A should be issued.

Respectfully submitted,

Date: February 10, 2020



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EXHIBIT A

FORM OF PROTECTIVE ORDER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DONNA DESANTO OTT

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:
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v.

Docket No. C-2018-3005829

METROPOLITAN EDISON COMPANY

PROTECTIVE ORDER

Upon request of Donna DeSanto Ott (“Complainant”) for a Protective Order:

IT IS ORDERED THAT:

1. The Motion is hereby granted and this Protective Order is issued to establish procedures for the protection of all materials and information identified in Paragraphs 2 and 3 below, which are or will be filed with the Pennsylvania Public Utility Commission (“Commission”), produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated with it. All persons now or hereafter granted access to the materials and information identified in Paragraphs 2 and 3 of this Protective Order, including the Complainants and Metropolitan Edison Company (the “Company”), shall use and disclose such information only in accordance with this Order.

2. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, in whatever form produced, stored or contained, including computerized memory, magnetic, electronic or optical media, furnished in this proceeding that the producing party believes to be of a proprietary or confidential nature and are so designated by being stamped “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material. Such materials are referred to in this Protective Order as “Proprietary

Information.” When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

3. For purposes of this Protective Order, there are two categories of Proprietary Information: ~~“CONFIDENTIAL” and “HIGHLY CONFIDENTIAL”~~ protected material. A producing party may designate as “CONFIDENTIAL” those materials that are customarily treated by that party as sensitive or proprietary, that are not available to the public, and that, if generally disclosed, would subject that party to the risk of competitive disadvantage or other business injury. A producing party may designate as “HIGHLY CONFIDENTIAL” those materials that are of such a commercially sensitive nature, relative to the business interests of parties to this proceeding, or of such a private or personal nature, that the producing party is able to justify a heightened level of confidential protection with respect to those materials. The parties shall endeavor to limit the information designated as “HIGHLY CONFIDENTIAL” protected material.

4. Subject to the terms of this Protective Order, Proprietary Information shall be provided to counsel for a party who meets the criteria of a “Reviewing Representative” as set forth below. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, testimony, cross-examination, argument, or settlement discussions in this proceeding. To the extent required for participation in this proceeding, such counsel may allow others to have access to Proprietary Information only in accordance with the conditions and limitations set forth in this Protective Order.

5. Nothing in this Protective Order precludes the use by the Commission and its staff, consistent with this Protective Order, of Proprietary Information produced in this proceeding and made part of the record.

6. Information deemed “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material shall be provided to a “Reviewing Representative.” For purposes of “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material, a “Reviewing Representative” is a person who has signed a Non-Disclosure Certificate and is:

- i. An attorney who has formally entered an appearance in this proceeding on behalf of a party; or
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i) above.

7. Reviewing Representatives qualified to receive “HIGHLY CONFIDENTIAL” protected material may discuss HIGHLY CONFIDENTIAL protected material with their client or with the entity with which they are employed or associated, but may not share with, or permit the client or entity to review or have access to, the HIGHLY CONFIDENTIAL protected material.

8. Proprietary Information shall be treated by the parties and by the Reviewing Representative in accordance with the terms of this Protective Order, which are hereby expressly incorporated into the certificate that must be executed pursuant to Paragraph 9(a). Proprietary Information shall be used as necessary, for the conduct of this proceeding and for no other purpose. Proprietary Information shall not be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person’s responsibilities in this proceeding.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate in the form provided in Appendix A, provided, however, that if an attorney or expert qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney’s instruction, supervision or control need not do so. A

copy of each executed Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

~~(b)~~ Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

10. The parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information.

11. The Commission and all parties will consider and treat the Proprietary Information as within the definition of “confidential proprietary information” in Section 102 of the Pennsylvania Right-to-Know Law of 2008, 65 P.S. § 67.102 and subject to the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act (65 P.S. § 67.101 et seq.) until such information is found by a tribunal with jurisdiction to be not confidential or subject to one or more exemptions.

12. Any public reference to Proprietary Information by a party or its Reviewing Representative shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

13. The part(s) of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits (including discovery responses made part of the record), writings, testimony, cross examination, and argument, and including reference thereto as mentioned in Paragraph 12 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission.

14. The parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a party challenges the designation of a document or information as proprietary, the producing party retains the burden of demonstrating that the designation is appropriate.

15. The parties shall retain the right to object to the production of Proprietary Information on any proper ground, to refuse to produce Proprietary Information pending the adjudication of the objection, and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order.

16. Within 30 days after a Commission final order is entered in the above-captioned proceedings, or in the event of appeals, within thirty days after appeals are finally decided, the receiving party, upon request, shall either destroy or return to the producing party all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that a receiving party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the producing party, upon

request, the receiving party shall certify in writing to the producing party that the Proprietary Information has been destroyed.

Date: _____

Jeffrey A. Watson
Administrative Law Judge

APPENDIX A
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DONNA DESANTO OTT :
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 :
 v. : **Docket No. C-2018-3005829**
 :
 :
METROPOLITAN EDISON COMPANY :

**ACKNOWLEDGMENT OF
PROTECTIVE ORDER**

TO WHOM IT MAY CONCERN:

The undersigned, _____ (NAME) is
_____ (TITLE), in the Proceeding as defined in the Protective Order. The
undersigned has read and understands the Protective Order granted in the Proceeding, which
Protective Order deals with the treatment of Confidential Information. The undersigned agrees to be
bound by, and comply with, the terms and conditions of said Protective Order.

NAME

SIGNATURE

ADDRESS

EMPLOYER

DATE: _____

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DONNA DESANTO OTT

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:
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:
:

V.

Docket No. C-2018-3005829

METROPOLITAN EDISON COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Petition 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:

Donna DeSanto Ott
111 Meadowlark Road
Reading, PA 19606
dott1006@icloud.com

Administrative Law Judge Jeffrey A. Watson
Pennsylvania Public Utility Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222
jeffwatson@pa.gov

Michael P. Giles, Esquire
Law Office of Michael P. Giles
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Dated: February 10, 2020



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