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

Dear Secretary Chiavetta:

Enclosed please find the Response of Metropolitan Edison Company to the Motion for an Extension of time and Motion for Leave to File Surrebuttal Testimony of Judith D. Hendin 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**

JUDITH D. HENDIN

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2018-3003324

**RESPONSE OF METROPOLITAN EDISON COMPANY TO THE MOTION FOR AN
EXTENSION OF TIME AND MOTION FOR LEAVE TO FILE SURREBUTTAL
TESTIMONY OF JUDITH D. HENDIN**

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, hereby files this Response to the Motion for an Extension of Time and Motion for Leave to File Surrebuttal Testimony of Judith D. Hendin (“Complainant”).

In support thereof, the Company avers as follows:

I. BACKGROUND

1. On June 29, 2018, the Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding 402 Woodland Road, Easton, Pennsylvania 18042 (the “Service Location”) under Account No. 100017185438 (“Account”) which was electronically served on the Company on July 11, 2018.

2. On July 31, 2018, the Company filed its Answer and New Matter denying the material allegations as well as Preliminary Objections.

3. On August 21, 2018, the Complainant filed a request for extension of time to file a reply to the Company’s Answer and New Matter and Preliminary Objections.

4. On August 22, 2018, the Complainant filed an addendum to her request for extension of time to file a reply to the Company’s Answer and New Matter and Preliminary Objections.

5. On August 23, 2018, a Motion Judge Assignment Notice was issued assigning this matter to Administrative Law Judge (“ALJ”) Jeffrey A. Watson for disposition.

6. On August 24, 2018, an Interim Order was issued by ALJ Watson which granted the Complainant’s request for an extension of time until September 12, 2018, to file a response to the Company’s Answer and New Matter and Preliminary Objections.

7. On September 14, 2018, in accordance with 52 Pa. Code § 5.341, the Company forwarded to the Complainant interrogatories and document requests (“Company’s 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.

8. On October 2, 2018, the Complainant submitted her responses to the Company’s Discovery Requests. That same day, the Complainant also filed a letter requesting that the proceedings be “paused” until December 15, 2018.

9. On October 18, 2018, an Interim Order was issued by ALJ Watson denying the Company’s Preliminary Objections.

10. Also on October 18, 2018, 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. Relevant to this Motion, ALJ Watson issued a witness notification deadline of January 18, 2019 and a discovery deadline of April 19, 2019.

11. On October 29, 2018, the Complainant filed a response to the Company’s Preliminary Objections.

12. On November 1, 2018, Attorney Waldron entered her appearance as counsel of record for the Complainant.

13. On January 17, 2019, the Complainant forwarded to the Company interrogatories and document requests (“Complainant’s Discovery Requests”) via electronic and first class mail

14. On January 18, 2019, in accordance with the Interim Order Establishing Litigation Schedule, both the Complainant and the Company provided notices and summaries of testimony for its factual and expert witnesses. The Complainant listed her anticipated factual and expert witnesses as herself, Dr. David Carpenter, including a summary of testimony, and Dr. William G. Kracht, D.O., including both public and confidential versions of written testimony. The Company listed its anticipated factual and expert witnesses as John Ahr, Dr. Christopher C. Davis, Ph.D., and Dr. Mark Israel, M.D.

15. On January 28, 2019, the Company objected to a specific question in Complainant’s Discovery Requests.

16. On January 29, 2019, the Complainant submitted a second notice of anticipated witnesses which listed as anticipated witnesses only Dr. David Carpenter, with a summary of expected testimony enclosed, and Dr. William G. Kracht, D.O., with written testimony enclosed.

17. On February 11, 2019, the Company responded to the Complainant’s Discovery Requests.

18. On May 9, 2019, in accordance with the Interim Order Establishing Litigation Schedule, Complainant’s counsel submitted a status report wherein it was averred that the Complainant was interested in being advised of relocation options for “Ms. Hendin’s property” and that a field visit was being scheduled with the Company. Additionally, the Complainant averred that written testimony of Dr. Kracht and a summary of testimony for Dr. Carpenter had previously submitted in January 2019. The Complainant further requested that should a prehearing

conference be scheduled, it be held after June 30, 2019, in order to provide the Complainant with ample time to review the relocation options.

19. On May 10, 2019, in accordance with the Interim Order Establishing Litigation Schedule, the Company submitted a status report wherein the Company averred that the Complainant had expressed an interest in reviewing relocation of the meter as a potential option and that the Company suggested that a prehearing conference be scheduled for further discussion in anticipation of evidentiary hearings should relocation not be pursued by the Complainant.

20. On May 23, 2019, an Interim Order Requiring Proposed Hearing Conference and Hearing Dates was issued.

21. On June 14, 2019, Company representatives went to the Service Location and met with the Complainant and her counsel, at her request, to evaluate potential meter relocation options at the Service Location.

22. During the site meeting, it was determined that the Complainant was not the owner of the Service Location, but rather a tenant residing at the Service Location.

23. On July 15, 2019, in accordance with the Interim Order entered May 23, 2019, the Company filed a second status report.

24. On July 16, 2019, in accordance with the Interim Order entered May 23, 2019, the Complainant filed a second status report.

25. On July 26, 2019, the Complainant filed a Motion to extend the schedule pending prehearing conference and request of a thirty-day extension to file the written testimony of Dr. David Carpenter.

26. On August 13, 2019, ALJ Watson entered an Interim Order Granting Complainant's Extension Request.

27. On August 21, 2019, the Company filed a Motion in Limine.
28. On August 29, 2019, each of the parties submitted a Status Report.
29. On September 5, 2019, the Complainant filed notification of anticipated witnesses.
30. Also on September 5, 2019, a Hearing Notice was issued which scheduled in-person hearings for December 19-20, 2019 before ALJ Joel Cheskis.
31. On September 10, 2019, the Complainant filed an Answer to the Company's Motion in Limine.
32. On September 13, 2019, a prehearing order was issued.
33. On September 18, 2019, the Complainant filed an Amended Witness Statement.
34. On October 21, 2019, the Company submitted the Rebuttal Testimony of Mr. John C. Ahr, Dr. Christopher C. Davis, Ph.D., and Dr. Mark Israel, M.D.
35. On December 11, 2019, the Company submitted a Motion for Admission Pro Hac Vice for Thomas Watson as well as an Entry of Appearance of Curtis Renner.
36. On December 19 and 20, 2019, in person hearings were held.
37. On December 26, 2019, a Hearing Notice was issued which scheduled an additional in-person hearing for January 24, 2020.
38. Also on December 26, 2019, an Order Granting Protective Order was issued.
39. On January 17, 2020, the Company resubmitted written testimony and provided additional exhibits.
40. On January 20, 2020, the Complainant resubmitted written testimony.
41. On January 21, 2020, the Complainant submitted exhibits.

42. Also on January 21, 2020, the Complainant filed a Motion for an Extension of time and Motion for Leave to File Surrebuttal Testimony. The Motion requests an extension of time of “180 days or as reasonable given the pending appeals,” and leave to submit surrebuttal testimony.

43. On January 24, 2020, a third in-person hearing was held.

44. The Company now files this response to the Complainant’s Motion for an Extension of Time and Motion for Leave to File Surrebuttal Testimony. For the reasons explained herein, the Company opposes the Complainant’s requests for an extension of time and for leave to file the surrebuttal testimony of a new witness.

II. RESPONSE

A. Request for Extension of Time

45. The Complainant avers that the request for extension is made pursuant to 52 Pa. Code § 1.15. Section 1.15 of the Commission’s regulations requires that good cause be shown in order for an extension of time to be granted.

46. The Company avers that the Complainant has not set forth good cause for the requested extension.

47. The Complainant’s allegations that an extension would allow her to conserve resources, preserve administrative resources and would be in the best interest of judicial economy are without merit. The Complainant fails to demonstrate how delaying this proceeding for an additional 180 days would conserve resources or serve judicial economy.

48. The Complainant filed the Formal Complaint on June 26, 2018, more than 18 months ago. The Commission and the parties have already spent considerable time and resources litigating the instant action, which includes participation in three days of evidentiary hearings. As explained in Section I of this response, the Complainant has previously requested and has been

granted additional time on several occasions. The Complainant's request to stay this proceeding for 180 days is yet another attempt to unnecessarily delay resolution of this proceeding before the Commission.

49. The Company avers that granting the Complainant's request to further delay this proceeding would set an unwanted precedent for other pending smart meter matters before the Commission.

50. Further, the Complainant requests that the formal complaint proceeding be extended in order to allow the Commonwealth Court to issue decisions on questions which the Complainant avers are similar to the questions at issue in the instant proceeding. In support of her request, the Complainant cites *McKnight v. Pa. PUC*, No. 1235 C.D. 2019; *Schmukler v. Pa. PUC*, No. 1102 C.D. 2019; and *Sunstein v. Pa. PUC*, No. 1581 C.D. 2019. However, the basis for the extensions in the *McKnight*, *Schmukler* and *Sunstein* proceedings before the Commonwealth Court does not apply here. The extensions in *McKnight*, *Schmukler* and *Sunstein* pertained to the submission of briefs regarding legal issues on appeal. The factual record in those cases had already been established before the Commission. In the instant proceeding, on the other hand, the Complainant is attempting to delay the establishment of a complete factual record. The parties in this case are not parties to the proceedings on appeal, and there is no reason to postpone establishing a factual record in this case.

51. The Company further avers that the law can only be applied as it exists. As the Commission has noted, action should not be taken based on speculation.¹ Neither should the Commission delay or halt matters pending uncertain outcomes or actions or in anticipation of a change in the law, particularly given uncertain time schedules and resolution. There is no

¹ *Pa. PUC v. Duquesne Light Company*, 1987 Pa. PUC Lexis 342; *Commonwealth v. Thomas*, 51 A.3d 255 (Pa. Super. Ct. 2012)).

inclination or reason here to wait until petitions for reconsideration or any appeals are settled in other smart meter matters.²

52. Furthermore, the requested delay would substantially prejudice Met-Ed by jeopardizing the Company's ability to complete its smart meter deployment in accordance with its established smart meter plan, which has been approved by the Commission.³

53. For the above reasons, the Company strenuously objects to the Complainant's request for an extension.

B. Request for Submission of Surrebuttal Testimony

54. The Complainant requests, in addition, or in the alternative, to the request for an extension of time, permission to submit surrebuttal testimony of a new witness, Ms. Tania Slawecki, in response to the Company's witness Dr. Christopher Davis, Ph.D.

55. The Complainant's request to submit the surrebuttal testimony of a new witness at this late stage of the proceeding should be denied because it is untimely and would substantially prejudice Met-Ed.

56. ALJ Watson stated in the October 18, 2018 Interim Order that parties must identify their intended witnesses by January 18, 2019. Now, over a year later, the Complainant seeks to introduce a new witness that was not previously identified. The Complainant has failed to provide any justification as to why testimony from this witness could not have been provided earlier. For example, the Complainant has not alleged that there is any new issue in this case that would require

² See *Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission*, Docket Number L-2018-3002672 (Order entered September 3, 2019).

³ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994. The Companies' Smart Meter Deployment Plan, filed June 16, 2014 and approved June 20, 2014, proposed that 98.5% of Met-Ed's customers would receive smart meters by the end of mid-2019, and the remaining 1.5% that may require alternative communication solutions or difficult to reach locations by the end of 2022.

the testimony of a new witness. The Complainant simply states that the new witness would respond to the hearing testimony of Company witness Dr. Davis pertaining to the Complainant's cell phone usage but does not allege that this is a "new" issue that would require the written surrebuttal testimony of a new witness.

57. The presentation of testimony from a witness that has not previously testified in this case at this late stage of the proceeding would not allow Met-Ed a full and fair opportunity to respond. As such, Met-Ed would be substantially prejudiced by the Complainant's request.

58. For the above reasons, the Company objects to the Complainant's request for the submission of surrebuttal testimony.

WHEREFORE, Metropolitan Edison Company respectfully requests that the Commission deny in its entirety the Motions of Judith D. Hendin.

Respectfully submitted,

Dated: February 10, 2020



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JUDITH D. HENDIN

v.

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Docket No. C-2018-3003324

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing documents upon the individual 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:

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Dated: February 10, 2020



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