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JOANNA A. WALDRON  
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February 14, 2020

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FEB 14 2020

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Via FedEx**

Rosemary Chiavetta, Secretary  
Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed please find Judith Hendin's Motion for Late Filed Exhibits and the applicable Certificate of Service with regard to the above-captioned matter.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,



Joanna A. Waldron, Esquire  
CURTIN & HEEFNER LLP

cc: Per Certificate of Service

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FEB 14 2020

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Judith D. Hendin :  
 :  
 V. : C-2018-3003324  
 :  
 Metropolitan Edison Company :

**MOTION FOR AN EXTENSION OF TIME AND MOTION FOR LEAVE TO FILE  
SURREBUTTAL TESTIMONY**

Complainant Judith Hendin hereby files this Motion for Late Filed Exhibits pursuant to the instructions at the January 24, 2019 telephonic hearing. The Motion respectfully requests that Administrative Law Judge Joel Cheskis grant the admission of the late-filed exhibits.

1. Complainant Judith Hendin filed a Complaint in this matter on June 26, 2018.
2. An Interim Order was entered by Administrative Law Judge Watson on October 18, 2018.
3. Ms. Hendin was not represented at the commencement of this action, and Counsel entered appearance on behalf of Ms. Hendin in November 2018.
4. Ms. Hendin served the written testimony of Dr. Kracht on January 18, 2019.
5. Defendant Metropolitan Edison Company (“Met-Ed” or “Company”) and Ms. Hendin submitted status updates on May 9, 2019.
6. A second Interim Order Requiring Proposed Prehearing Conference and Hearing Dates was entered on May 23, 2019.
7. The second Interim Order contemplated hearing dates between September 10, 2019

and October 30, 2019.

8. The parties met to discuss relocation settlement options on June 14, 2019.

9. The parties then submitted additional status updates on July 16, 2019, with potential dates for prehearing conferences before and after July 25, 2019.

10. The parties had proposed a prehearing conference September 12, 2019.

11. On August 13, 2019, Administrative Law Judge Watson ordered that the parties would appear for hearing in December of 2019, and that a prehearing conference should be scheduled after September 30, 2019.

12. On September 5, 2019, a hearing notice was issued for December 19 and December 20, 2019, with no prehearing conference.

13. December 19 and December 20, 2019, the parties appeared before Administrative Law Judge Cheskis at the Public Utility Commission ("Commission:") in Harrisburg.

14. The Hearing Notice indicated that two days were reserved for testimony, December 19 and December 20.

15. Ms. Hendin appeared in person on December 19, 2019, for testimony.

16. Dr. Kracht, Ms. Hendin's witness, and all of the Defendant's witnesses appeared by telephone.

17. On December 19, 2019, Ms. Hendin and Dr. Kracht testified and were cross examined, as well as some of Defendant's witnesses.

18. At the end of the hearing day on December 19, 2019, the parties agreed that the following day would start at 9:00 a.m., beginning with testimony from Defendant's witness, Dr. Israel, who had not been called as a witness but was participating by phone. Tr. at p. 196 lines 23-25, p. 197 lines 1- 18.

19. The December 20, 2019 began at 9:00 a.m. but was unexpectedly cut short due to conflict of Dr. Israel revealed during the course of questioning, prior to 10:00 am. Tr. at p. 228, lines 1 – 9.

20. At 10:21 a.m. the abbreviated hearing concluded with the parties agreeing to reschedule an additional hearing date. Tr. at p. 244.

21. The parties mutually agreed that the hearing for Dr. Israel’s cross examination would continue on January 24, 2020, with the parties appearing by telephone.

22. On January 20, 2020, per Your Honor’s instruction, Ms. Hendin filed corrected Confidential and Non-Confidential versions of the witness statements of Ms. Hendin and Dr. Kracht.

23. Ms. Hendin also produced clean copies of the Confidential Medical Records, pursuant to Your Honor’s instructions at the hearing, which are listed for reference on Exhibit A under December Hearing List of Exhibits. A Master List of Exhibits is attached hereto as “Exhibit A”.

24. On January 23, 2020, Cross examination Exhibits X1 through X19 were overnighted<sup>1</sup> and emailed via sharefile link to opposing counsel and Your Honor.

25. During the hearing on January 24, 2020, Your Honor suggested that the issue of the cross examination exhibits could be address in a motion for late filed exhibits.<sup>2</sup>

*Cross Exhibits and Late Filed Exhibits*

26. The Commission permits late filed exhibits when instructed by ALJs to file. *See, e.g., Bachman v. PECO Energy Company*, Pa. P.U.C. Docket No. F-2012-2322438 (2013) (admitting PECO late filed exhibits); *Pendergast v. Philadelphia Gas Works*, 2014 Pa. PUC

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<sup>1</sup> Copies were sent for the Court Reporter as well.

<sup>2</sup> Counsel has not received the transcripts from the third hearing date of January 24, 2020.

(Docket No. F-2012-2317187) (permitting late filed exhibit by both Complainant and PGW)

27. In an administrative law setting, hearsay rules are relaxed, and exhibits are not precluded from admission because of hearsay, authenticity or reliability, as those issues go to the weight of the exhibits. *Rox Coal Co. v Workers' Comp. Appeal Bd.*, 807 A.2d 906 (Pa. 2002).

28. Further, in an administrative law setting, the admission of references to articles, and excerpts, is not precluded.

29. Ms. Hendin's proffered exhibits are commensurate with the written testimony of Dr. Israel, which references various scientific studies, without providing the full article, and also which cite only excerpts from various documents.

30. As described below, seven of the intended Cross Exhibits are either sources cited or discussed in Dr. Israel's written testimony, or specifically addressed in his written testimony. Six of the Cross Exhibits are scientific studies about which Ms. Hendin wanted to probe Dr. Israel's knowledge.

31. Admission of scientific studies cite, relied on or discussed by Dr. Israel does not prejudice Defendant.

32. Moreover, scientific studies in the areas on which Dr. Israel is testifying are appropriate for cross examination purposes to identify whether he is familiar with the studies.

33. Additional exhibits go to Dr. Israel's credibility, his thoroughness, and what he relied on for his opinion.

*Exhibits Cited In Written Testimony or Discussed at the Hearing*

34. Dr. Israel's written testimony asserted that he "a 5-step methodology" to conduct a "medical evaluation" which began with "searches of medicatl and scientifiec databases to identify all studies published in peer-reviewed scientific journals of the exposure and the

reported related symptoms.” Israel St. at p. 6.

35. Certain Cross Exhibits are complete versions of studies discussed by Dr. Israel in his written testimony, about which Dr. Israel would be prepared to answer.

36. For example, Cross Exhibits X 3 and X 5 are full copies of scientific studies cited by Dr. Israel in his written testimony at pages 8, n. 1 and page 15, n. 7, respectively.

37. Dr. Israel discusses the “BioInitiative Report of 2012 and its subsequent updates,” in his written testimony at p. 18, line 16, as well in his Exhibit M4 to his written statement.

38. Cross Exhibit X 17, is the BioInitiative Report of 2012.

39. Cross Exhibits X 18 and X 19 are the subsequent updates of the BioInitiative Report, from 2017 and 2019 and were provided as Cross Exhibit X18 and X 19, respectively for use at the January 24, 2020 continued cross examination of Dr. Israel.

40. In addition to the scientific studies that Dr. Israel cited in his written testimony, he also addressed the World Health Organization and the International Agency for Research on Cancer (IARC). Israel St. at p. 16, lines 12 – 22, p. 17, lines 1-9.

41. Dr. Israel also provided Exhibit MI 1 which contained excerpts from the World Health Organization and other international sources, as well as citations to the International Agency for Research on Cancer (IARC) Press Releases and Monographs. Israel St. at p. 17 n. 8.

42. Intended Cross Exhibit X 12 is the International Agency for Research on Cancer (IARC) Monographs Questions and Answers, which provides an explanation of the referenced monographs.

43. Cross Exhibit X 16 is the Smith-Roe article from the ENVIRONMENTAL AND MOLECULAR MUTAGENESIS JOURNAL, arising out of the National Toxicology Program, which was discussed at the December 20, 2019 hearing. Tr. at 237, ln. 22.

*Scientific Studies*

44. Cross Exhibits X 6, X7, X8, X9, X10 and X11 are studies published in scientific journals about which Ms. Hendin wished to cross examine Dr. Israel to probe his knowledge and credibility regarding studies that address RF fields effects on the heart. Israel St. at p. 15 – 16.

45. Intended Cross Exhibit, X 14 is a 2014 scientific study, which is more recent than any of the studies cited by Dr. Israel in his written testimony.

46. Cross Exhibit X14 specifically addresses RF exposure, where Dr. Israel concedes he has not supervised or conducted research with RF, and addresses adults and teenagers, not animals. Tr. at p. 218, lines 21-22.

47. Dr. Israel testified on December 20<sup>th</sup> at the abbreviated session about his residency in pediatrics. Cross Exhibits X 2 and X 13 are Letters from the American Academy of Pediatrics which Ms. Hendin wished to use to cross examine Dr. Israel about his pediatric experience. Tr. at p. 216, lines 11 -24.

*World Health Organization and United States Sources*

48. Cross Exhibit X 4 is a letter to the Federal Communication Commission from the United State Department of Interior from 2014, in contravention to Dr. Israel's M1-1, which lists select Public Health Authorities, not including the United States, and Dr. Israel's MI-2 which quotes various state health agencies, but does not include federal agencies.

49. Exhibit 37 is a copy of the Oregon Statute effective on August 19, 2019 which is new since the submission of the written statements in this case and which calls for more research in the area.

50. Exhibits 23- 31 are provided as United States and World Health Organization Exhibits for Your Honor's consideration, in the accord with the cross examination on the

abbreviated date of December 20. Tr. at p.236.

51. Exhibit 33 is filing at the Public Utility Commission of California, which addresses the pulses of smart meters, a topic addressed by Dr. Davis, and on whom Dr. Israel relies in his written statement for conclusions as to the RF exposure levels from smart meters relative to cell phones. Israel St. p. 9 at 7-10.

52. Exhibit 34 is the entire letter from Santa Cruz County, as identified by Ms. Hendin in her written statement at No. 18.

53. Exhibit 35 and 36 on privacy concerns were provided to Your Honor as part of Ms. Hendin's *pro se* production, and are now provided for consideration as an Exhibit relative to testimony of Ms. Hendin regarding her health concerns.

54. In light of the two abbreviated hearing dates, and the standards for admissibility in this administrative proceeding, Ms. Hendin respectfully submits for consideration the following Appendices which she compiled that identify information by topic that Dr. Israel addressed in his written statement and testimony.

55. First, Exhibit 39 addresses the Effects of EMF on Animals as Exhibit 39, relative to discussions of Dr. Israel's review of scientific studies on animals.

56. Exhibit 38, the Children's Appendix, summarizes the information intended to probe Dr. Israel as to his background in pediatrics and, specifically effects of EMFs on children.

57. Lastly, Exhibit 40, the Resolutions Appendix, addresses the Public Health Authorities as addressed in the Exhibit MI- 1 of his written statement.

**WHEREFORE**, based on the foregoing, Complainant Judith Hendin, respectfully requests that your Honor admit the Cross Exhibits X1 – X-19, along with Exhibits 23 – 41.

Dated: February 14, 2020

s/ Joanna A. Waldron  
Joanna A. Waldron, Esquire  
Pa. ID # 84768  
CURTIN & HEEFNER LLP  
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jaw@curtinheefner.com  
*Attorney for the Complainant*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Judith D. Hendin

V.

Metropolitan Edison Company

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:

C-2018-3003324

**ORDER**

AND NOW this \_\_\_\_ day of \_\_\_\_\_, 2020, upon consideration of Plaintiff's Motion For Late-Filed Exhibits, it is hereby ordered that said Motion is GRANTED.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Judith D. Hendin

V.

Metropolitan Edison Company

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C-2018-3003324

**NOTICE TO PLEAD**

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA CODE 5.103 AND ANY PROCEDURAL ORDER IN THE ABOVE CAPTIONED PROCEEDING, YOU MAY FILE A REPLY TO THE ENCLOSED MOTION WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR REPLY SHOULD BE FIELD WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION P.O. BOX 3265 HARRISBURG PA 17105-3265. A COPY OF YOUR REPLY SHOULD BE SERVED ON THE UNDERSIGNED COUNSEL.

*s/ Joanna A. Waldron*

Joanna A. Waldron, Esquire

Pa. ID # 84768

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*Attorney for the Complainant*

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Judith D. Hendin

V.

Metropolitan Edison Company

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SECRETARY'S BUREAU

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Late Filed Exhibits has been served upon the following persons in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**Via U.S. MAIL**

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

**Via FEDERAL EXPRESS**

Administrative Law Judge Joel H. Cheskis  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
400 North Street, 2<sup>nd</sup> Floor West  
Harrisburg, PA 17120

Dated: February 14, 2020

s/Joanna A. Waldron  
Joanna A. Waldron, Esquire  
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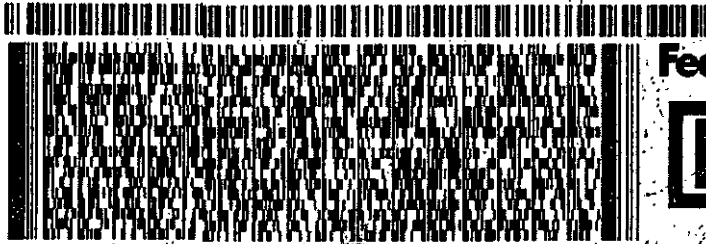
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