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February 26, 2020

**VIA ELECTRONIC FILING**

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

**Re: Heidi Fiedler v. Metropolitan Edison Company**  
**Docket No. C-2018-3003642**

Dear Secretary Chiavetta:

Attached please find the Main Brief on behalf of Metropolitan Edison Company regarding the above-referenced matter. This document has been served on the all parties as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Tori L. Giesler

Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Heidi Fiedler,

Complainant,

v.

Metropolitan Edison Company,

Respondent.

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Docket No. C-2018-3003642

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**METROPOLITAN EDISON COMPANY'S  
BRIEF IN OPPOSITION TO THE COMPLAINANT'S  
PETITION FOR INTERLOCUTORY REVIEW AND  
ANSWER TO MATERIAL QUESTION**

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## **I. INTRODUCTION**

On July 26, 2018, Metropolitan Edison Company (“Met-Ed” or the “Company”) was served with the Formal Complaint filed by Heidi Fiedler (“Complainant”), which challenged the Company’s planned installation of a new smart meter at her property and argued that such installation would violate Section 1510 of the Public Utility Code, 66 Pa.C.S. § 1501. Since that time, the Complainant has filed three Amended Complaints, the most recent of which was filed on February 3, 2020. The Complainant also filed a Motion for Discovery and Revised Litigation Schedule on February 3, 2020, which requested changes to the litigation schedule and additional time for discovery on the issues raised in the Third Amended Complaint. As explained herein, this Motion was the latest in a series of requests by the Complainant to revise the schedule for discovery and litigation in this proceeding.

On February 4, 2020, Administrative Law Judge F. Joseph Brady (“ALJ Brady”) issued an Interim Order that: (1) rejected the Third Amended Complaint because it was filed within 5 days of when a prehearing conference was scheduled to be held on February 5, 2020; and (2) denied the Complainant’s Motion for Discovery and Revised Litigation Schedule as moot.

On February 13, 2020, the Complainant filed an “Appeal of Interim Order Rejecting Complainant’s Third Amended Complaint and Dismissing Her Motion for Discovery and Revised Litigation Schedule.” Because the Complainant is challenging an interim order issued by the presiding officer, Met-Ed is treating the Complainant’s filing as a petition for interlocutory review and answer to material question. *See* 52 Pa. Code §§ 5.301-5.302.

As explained herein, the Complainant’s Petition fails to meet the high standard for Commission interlocutory review and should be denied. ALJ Brady correctly applied Section 5.91(c) of the Commission’s regulations when he rejected the Complainant’s Third Amended Complaint. Moreover, the Complainant’s Motion for Discovery and Revised Litigation

Schedule was properly denied as moot because it was entirely predicated on the Third Amended Complaint.

For these reasons, the Complainant's Petition for Interlocutory Review and Answer to Material Question is completely without merit and should be denied.

## **II. BACKGROUND**

On July 26, 2018, Met-Ed was served with the Complainant's original Formal Complaint.

On August 13, 2018, the Company filed its Answer and New Matter denying the material allegations. On the same day, the Company also filed Preliminary Objections to the Formal Complaint.

On September 21, 2018, Administrative Law Judge ("ALJ Watson") Jeffrey A. Watson issued an Interim Order, which denied the Company's Preliminary Objections. ALJ Watson also issued an Interim Order Establishing Initial Litigation Schedule, which set forth the schedule for discovery, the identification of witnesses, and filing of motions in this proceeding. Relevant to this Brief, ALJ Watson issued a witness notification deadline of December 28, 2018 and a discovery deadline of February 1, 2019.

On November 7, 2018, Met-Ed was served with the Complainant's First Amended Complaint, which sought to add FirstEnergy Corporation as a respondent in this proceeding and made additional requests for relief.

On November 27, 2018, the Company filed its Answer and New Matter to the First Amended Complaint.

On December 28, 2018, in accordance with the Interim Order Establishing a Litigation Schedule, the Company provided notice and summaries of testimony for its factual and expert witnesses.

By letter directed to the Commission and dated February 1, 2019, the Complainant stated that she had not received a ruling from the Commission on her Amended Complaint and requested a six-month extension of time for the “discovery process.”

On February 13, 2019, the Company filed a Motion to Dismiss the Complaint due to her failure to comply with ALJ Watson’s Orders granting Met-Ed’s Motions to Compel.

On February 14, 2019, ALJ Watson entered an Interim Order denying the Complainant’s request for an extension of time to complete discovery.

On February 28, 2019, the Company filed a Status Report, as required by the September 21, 2018 Interim Order Establishing a Litigation Schedule.

On March 1, 2019, an Interim Order Rescheduling Prehearing Conference was issued.

On March 5, 2019, a Call-In Telephonic Prehearing Conference Notice was issued.

On March 7, 2019, Met-Ed was served with the Complainant’s Second Amended Complaint.

On March 13, 2019, a Prehearing Order Rescheduling Prehearing Conference was issued. That same day, a Call-In Telephone Cancellation/Reschedule Prehearing Conference Notice was issued.

On March 18, 2019, the Complainant filed a Status Report as well as a request for cancellation of the prehearing conference and request for an amended litigation schedule.

On March 25, 2019, an Interim Order was issued, which denied the Complainant’s request to cancel the prehearing conference and required the parties to attend and fully participate in the prehearing conference.

On March 27, 2019, the Company filed an Answer and New Matter as well as Preliminary Objections to the Complainant’s Second Amended Complaint.

On April 1, 2019, a Call-In Telephone Cancellation/Reschedule Prehearing Conference Notice was issued.

On April 9, 2019, the Complainant filed a Motion to Dismiss the Company's Preliminary Objections to the Second Amended Complaint.

On April 22, 2019, the Complainant filed a Motion to Dismiss the Company's Answer and New Matter to the Second Amended Complaint.

On April 24, 2019, a Further Call-In Telephonic Prehearing Conference Notice was issued which scheduled a prehearing conference for May 2, 2019.

On April 24, 2019, a Second Interim Order Rescheduling Prehearing Conference was issued.

On May 2, 2019, a prehearing conference was held wherein all parties appeared and participated.

On October 10, 2019, an Interim Order was entered, which disposed of outstanding discovery disputes and held the Company's February 13, 2019 Motion to Dismiss in abeyance.

Also on October 10, 2019, an Interim Order was issued that revised the litigation schedule and denied the Complainant's request to permit additional discovery in this proceeding.

Also on October 10, 2019, an Interim Order was issued, which denied the Complainant's requests to join FirstEnergy Corporation as a Respondent, dismiss the Company's Answer and New Matter to the Second Amended Complaint, and dismiss the Company's Preliminary Objections to the Second Amended Complaint. Further, the Company's Preliminary Objections were granted, which resulted in the Complainant's request for money damages being dismissed and the Complainant being prohibited from introducing any testimony or exhibits at any evidentiary hearing regarding the alleged damages set forth in the Second Amended Complaint.

On November 22, 2019, a Judge Change Notice was issued, which indicated that ALJ Brady was replacing ALJ Watson as the presiding officer in this matter.

On December 5, 2019, a Notice was issued scheduling an in-person hearing before ALJ Brady on February 5, 2020, in Philadelphia, Pennsylvania.

On December 19, 2019, a Prehearing Order was issued by ALJ Brady, which set forth various procedural rules for this matter.

On January 20, 2020, the Complainant filed a Motion for Continuance and Change of Location. In that Motion, the Complainant requested that the evidentiary hearing be moved from Philadelphia to Harrisburg. She also asked that the evidentiary hearing be rescheduled because her witnesses were unavailable for a hearing on February 5, 2020.

On January 27, 2020, a Notice and Interim Order were issued, changing the February 5, 2020 evidentiary hearing into a prehearing conference.

On February 3, 2020, the Complainant filed a Third Amended Complaint and a Motion for Discovery and Revised Litigation Schedule.

On February 4, 2020, ALJ Brady issued an Interim Order that: (1) rejected the Third Amended Complaint because it was filed within 5 days of when a prehearing conference was scheduled to be held on February 5, 2020; and (2) denied the Complainant's Motion for Discovery and Revised Litigation Schedule as moot.

On February 5, 2020, the prehearing conference was held as scheduled. Later that day, a Notice was issued, which scheduled an in-person evidentiary hearing in Harrisburg, Pennsylvania on April 28, 2020, and replaced ALJ Brady with Administrative Law Judge Joel H. Cheskis ("ALJ Cheskis") as the presiding officer.

On February 12, 2020, ALJ Cheskis issued a Prehearing Order, which set forth various procedural rules for this proceeding.

On February 13, 2020, the Complainant filed an “Appeal of Interim Order Rejecting Complainant’s Third Amended Complaint and Dismissing Her Motion for Discovery and Revised Litigation Schedule,” which requested interlocutory review of ALJ Brady’s February 4, 2020 Interim Order.

For the reasons explained below, the Complainant fails to meet the high standard for the Commission to grant interlocutory review. Therefore, the Complainant’s Petition for Interlocutory Review and Answer to Material Question should be denied.

### **III. STANDARD OF REVIEW**

Under Section 5.302 of the Commission’s regulations, a party may file a petition requesting interlocutory “review and answer to a material question which has arisen or is likely to arise.” 52 Pa. Code § 5.302(a). Such a petition must present “the question to be answered” and provide “the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.” *Id.* (emphasis added). A stay of the proceedings during interlocutory review only can be granted when it is “required to protect the substantial rights of a party.” *Id.* § 5.302(b).

Moreover, it is well-established that the Commission generally disfavors petitions for interlocutory review because “the preferred approach is to permit proceedings to move forward in the normal course in order to provide all parties, the presiding officer, and the Commission with a full opportunity to develop the record, brief issues, and present arguments at each stage.”<sup>1</sup> As a result, in determining “substantial prejudice,” the Commission considers whether the

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<sup>1</sup> *City of Reading & Centre Park Historic District v. UGI Utilities, Inc.*, Docket Nos. C-2015-2516051, *et al.*, p. 7 (Order entered Feb. 9, 2017) (“*City of Reading*”) (citing *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021, p. 3 (Order entered Oct. 23, 2009)).

alleged error, and any prejudice flowing from that issue, could not be satisfactorily cured during the normal Commission review process.<sup>2</sup>

#### IV. ARGUMENT

##### A. **THE PETITION FOR INTERLOCUTORY REVIEW SHOULD BE DENIED BECAUSE IT FAILS TO MEET THE HIGH STANDARD FOR INTERLOCUTORY REVIEW**

In her Petition for Interlocutory Review, the Complainant does not explicitly ask the Commission to answer a material question. (*See* Petition, pp. 1-3.) However, she generally avers that ALJ Brady incorrectly rejected her Third Amended Complaint and dismissed her Motion for Discovery and Revised Litigation Schedule. (*See id.*) The Complainant alleges that her Third Amended Complaint was timely filed because, according to her, Section 5.91(c)'s prohibition on the filing of amended pleadings within 5 days of a hearing does not apply to a prehearing conference. (*See id.*) Therefore, she requests that the Commission reverse ALJ Brady's February 4, 2020 Interim Order.

The Commission should deny the Complainant's Petition for Interlocutory Review and answer this alleged material question in the negative. Nowhere in the Petition does the Complainant provide compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding. The Complainant also fails to explain how any substantial prejudice allegedly created by the February 4, 2020 Interim Order cannot be satisfactorily cured during the normal Commission review proceeding. As a result, the Complainant's Petition is simply the latest in a long series of attempts to further delay this proceeding, which was initiated approximately 580 days ago.

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<sup>2</sup> *City of Reading*, p. 7 (Order entered Feb. 9, 2017) (citing *Joint Application of Bell Atlantic Corp. & GTE Corp.*, Docket No. A-310200F0002, *et al.* (Order entered June 10, 1999); *Pa. PUC v. Frontier Communications of Pa. Inc.*, Docket No. R-00984411 (Order entered Feb. 11, 1999); *In re: Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985)).

In addition, the Complainant's arguments challenging the February 4, 2020 Interim Order lack merit. First, ALJ Brady correctly applied Section 5.91(c) of the Commission's regulations and rejected the Complainant's Third Amended Complaint. *See* 52 Pa. Code § 5.91(c). As ALJ Brady found, Section 5.91(c) prohibits the filing of an amendment to a pleading "within 5 days preceding the commencement of or during a hearing unless directed or permitted by the Commission or the presiding officers after opportunity for all parties to be heard thereon." (February 4, 2020 Interim Order, p. 2) (emphasis omitted). In this case, the Complainant filed her Third Amended Complaint on February 3, 2020, which was within 5 days of the February 5, 2020 prehearing conference. Although the Complainant contends that a prehearing conference is not a "hearing" as used in Section 5.91(c), she acknowledges that there are no formal definitions of the two terms in the Complainant's regulations. (*See* Petition, p. 2.) In fact, the Commission's regulations governing prehearing conferences appear in Chapter 5, Subchapter B, which is entitled "HEARINGS." *See* 52 Pa. Code, Ch. 5, Subch. B. Moreover, given that a prehearing conference is intended to "aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice" by discussing, among other things, "[t]he simplification of the issues," it is a reasonable interpretation of Section 5.91(c) that a party needs to file an amended complaint raising new issues in a sufficient amount of time before the prehearing conference takes place.

Second, even assuming *arguendo* that ALJ Brady misapplied Section 5.91(c) of the Commission's regulations, his ruling was squarely within his authority to regulate this proceeding. Indeed, it is well-established that the presiding officers have authority to, among other things, "impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding." 52 Pa. Code § 5.483(a). Here, the Complainant has repeatedly filed Amended

Complaints, which, along with other actions, have prevented this case from continuing in a timely and orderly fashion to the evidentiary hearing. Also, as explained previously, the Complainant has used these Amended Complaints as grounds for trying to reopen discovery, which ended several months ago on February 1, 2019. Therefore, it was well within ALJ Brady's authority to regulate the course of this matter by rejecting the Complainant's Third Amended Complaint and dismissing as moot the Complainant's Motion for Discovery and Revised Litigation Schedule.

Finally, the Complainant's dilatory conduct and failure to comply with the presiding officer's directions warrant the rejection of her Third Amended Complaint. In ALJ Watson's October 10, 2019 Interim Order Revising Litigation Schedule, he directed the parties to, among other things, file status reports on or before November 1, 2019, that provided their availability for evidentiary hearings. (*See* Interim Order Revising Litigation Schedule, Ordering Paragraph 8.) Met-Ed followed that Interim Order and outlined its availability for evidentiary hearings in the Company's November 1, 2019 status report. The dates provided by the Company included February 5, 2020. The Complainant, however, did not provide her availability for evidentiary hearings in her status report filed on November 1, 2019. Met-Ed even filed another status report on November 13, 2019, which explicitly stated that "Ms. Fiedler has not advised regarding her preference of hearing format nor provided her and her witnesses' availability for a hearing as required by the Interim Order." (Met-Ed November 13, 2019 Status Report.) On December 5, 2019, in the absence of any dates provided by the Complainant, ALJ Watson properly scheduled the evidentiary hearing for February 5, 2020.

Yet, the Complainant waited until January 20, 2020, to file her Motion for Continuance and Change of Location, in which she claimed, for the first time, that her witnesses were not

available for an evidentiary hearing on February 5, 2020. Nowhere in the Complainant's January 20, 2020 Motion did she: (1) state that she would be filing a Third Amended Complaint; (2) mention the new issues that she raised in the Third Amended Complaint; or (3) claim that she needed more time to engage in discovery.

In response to that Motion, ALJ Brady converted the February 5, 2020 evidentiary hearing into a prehearing conference on January 27, 2020. If that did not occur, and assuming *arguendo* that ALJ Brady's interpretation of 52 Pa. Code § 5.91(c) is incorrect, the Complainant would have had to file her Third Amended Complaint by no later than January 31, 2020. Even still, the Complainant waited to file her Third Amended Complaint until February 3, 2020, *i.e.*, two days before the February 5, 2020 prehearing conference.

In sum, as seen by the lengthy history of this proceeding, the Complainant had more than enough time to amend her Complaint and raise the new issues presented in her Third Amended Complaint. ALJ Brady properly exercised his discretion and authority to regulate the proceeding to ensure that the case finally proceeds to hearing with both parties being well-informed of the issues that will be litigated in this proceeding. Thus, ALJ Brady properly rejected the Third Amended Complaint and denied the related Motion for Discovery and Revised Litigation Schedule.

For these reasons, the Commission should soundly deny the Complainant's Petition for Interlocutory Review and Answer to Material Question.

V. CONCLUSION

WHEREFORE, Metropolitan Edison Company respectfully requests that the Pennsylvania Public Utility Commission deny the Petition for Interlocutory Review and Answer to Material Question filed by Heidi Fiedler.

Respectfully submitted,



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Date: February 26, 2020

Attorneys for Metropolitan Edison Company

**BEFORE THE  
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Complainant,	:	
	:	
v.	:	Docket No. C-2018-3003642
	:	
Metropolitan Edison Company,	:	
	:	
Respondent.	:	

**CERTIFICATE OF SERVICE**

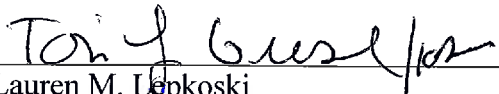
I hereby certify that I have this day served a true copy of the Main Brief of West Penn Power Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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

Heidi Fiedler  
432 East Wesner Road  
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Administrative Law Judge Joel H. Cheskis  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
400 North Street  
Harrisburg, PA 17120

Dated: February 26, 2020

  
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