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March 3, 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: David M. Maloney v. Metropolitan Edison Company**  
**Docket No. C-2019-3007460**

Dear Secretary Chiavetta:

Enclosed please find the Petition for Protective Order 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

kbw  
Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**DAVID M. MALONEY**

**V.**

**METROPOLITAN EDISON COMPANY**

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**Docket No. C-2019-3007460**

**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 January 24, 2019, the Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding 320 Merkle Road, Boyertown, Pennsylvania 19512 and 304 Merkle Road, Boyertown, Pennsylvania 19512, which was electronically served on the Company on January 24, 2019.

2. On February 13, 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 March 20, 2019, a Motion Judge Assignment Notice was issued assigning this matter to ALJ Watson for disposition.

4. On May 1, 2019, ALJ Watson issued an Interim Order, which denied the Company’s Preliminary Objections.

5. On June 24, 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 included a protective agreement.

6. The Complainant did not file any objection to the Discovery Requests and did not provide any responses or the requested documents by the due date.

7. Due to a lack of response to the Discovery Requests, on July 23, 2019, the Company filed a Motion to Compel.

8. On July 26, 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.

9. On July 31, 2019, ALJ Watson issued an Interim Order which granted the Company's Motion to Compel and ordered the Complainant to serve upon counsel for the Company full and complete responses to all of the Discovery Requests not later than August 30, 2019.

10. On September 10, 2019, due to the Complainant's continued lack of response to the Company's Discovery Requests in contradiction to the Interim Order entered on July 31, 2019, the company filed a Motion to Dismiss.

11. On September 18, 2019, the Complainant provided to the Company incomplete responses to discovery as well as a stipulation for protective agreement.

12. On October 9, 2019, ALJ Watson sent a letter to the Complainant, with a copy to counsel for the Company, stating that documents which appeared to be the Complainant's answers to the Company's Discovery Requests were being returned to the Complainant as it is not appropriate for ALJ Watson to receive the materials.

13. On October 22, 2019, ALJ Watson entered an Interim Order which directed, in part, that the parties confer on or before November 20, 2019 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.

14. On October 25, 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. The Complainant has not submitted a Witness list to the Company.

15. On December 2, 2019, the Company submitted a Status Report in accordance with ALJ Watson's Interim Order entered on October 22, 2019.

16. On December 13, 2019, ALJ Watson entered an Interim Order which directed, in part, that the parties confer 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.

17. On January 9, 2020, the Company submitted a Status Report in accordance with ALJ Watson's Interim Order entered on December 13, 2019.

18. 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.

19. 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.<sup>1</sup>

20. On January 10, 2020, in an effort to comply with ALJ Watson's directive in the Interim Order issued December 13, 2019, the Company sent a copy of the proposed protective order to the Complainant for his review.

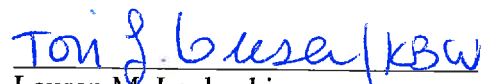
21. To date, the Complainant has provided no comment or input regarding the draft protective order forwarded to him on January 10, 2020.

22. 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: March 3, 2020



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*Counsel for Metropolitan Edison Company*

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

**EXHIBIT A**

**FORM OF PROTECTIVE ORDER**

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**DAVID M. MALONEY**

**V.**

**METROPOLITAN EDISON COMPANY**

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**Docket No. C-2019-3007460**

**PROTECTIVE ORDER**

Upon request of David M. Maloney (“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

DAVID M. MALONEY

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V.

Docket No. C-2019-3007460

METROPOLITAN EDISON COMPANY

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**ACKNOWLEDGMENT OF  
PROTECTIVE ORDER**

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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**

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**Docket No. C-2019-3007460**

**CERTIFICATE OF SERVICE**

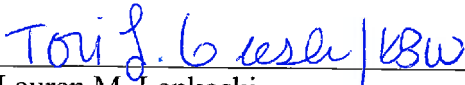
I hereby certify that I have this day served a true copy of the Petition of Metropolitan Edison Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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

David M. Maloney  
320 Merkle Road  
Boyertown, PA 19512  
[dmaloney@pahousegop.com](mailto:dmaloney@pahousegop.com)

Administrative Law Judge Jeffrey A. Watson  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
301 5<sup>th</sup> Avenue, Suite 220  
Pittsburgh, PA 15222  
[jeffwatson@pa.gov](mailto:jeffwatson@pa.gov)

Dated: March 3, 2020

  
\_\_\_\_\_  
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[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)