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May 8, 2020

**VIA ELETRONIC FILING**

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

**Re: Charles and Sylvia Bolte v. Metropolitan Edison Company**  
**Docket No. C-2019-3011287**

Dear Secretary Chiavetta:

Enclosed please find a copy of the Objections of Metropolitan Edison Company to the Complainants' Written Testimony and Exhibits, in the above-referenced matter. This document has been served as shown in the Certificate of Service.

Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



Tori L. Giesler

Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Charles and Sylvia Bolte,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2019-3011287
	:	
Metropolitan Edison Company,	:	
	:	
Respondent.	:	

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**OBJECTIONS OF  
METROPOLITAN EDISON COMPANY TO  
THE COMPLAINANTS' WRITTEN TESTIMONY AND EXHIBITS**

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**TO ADMINISTRATIVE LAW JUDGE BENJAMIN MYERS:**

Metropolitan Edison Company (“Met-Ed” or the “Company”) hereby files these Objections pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code § 5.401(a) and the directive of Administrative Law Judge Benjamin Myers (the “ALJ”), to exclude certain portions of the written testimony and exhibits submitted by Charles and Sylvia Bolte (“Complainants”). Met-Ed objects to a portion of the Complainants’ written testimony and several exhibits because they: (1) are hearsay and are not subject to a hearsay exception under the Pennsylvania Rules of Evidence; (2) are irrelevant; (3) are inherently unreliable; (4) have not been and cannot be authenticated by the Complainant; and (5) lack a proper foundation.

In support thereof, Met-Ed states as follows:

## **I. INTRODUCTION**

1. On June 29, 2019, the Complainants filed a Formal Complaint with the Commission against Met-Ed at the above-captioned docket. On July 2, 2019, the Company was electronically served with the Formal Complaint.

2. On September 17, 2019, the ALJ issued an Interim Order denying Met-Ed's Preliminary Objections.

3. A telephonic hearing was scheduled for November 25, 2019.

4. On October 2, 2019, Met-Ed requested a continuance of the scheduled hearing date. The hearing was rescheduled for December 18, 2019.

5. On November 18, 2019, Met-Ed submitted its identification of witnesses and exhibits for the upcoming hearing.

6. Subsequently, the Complainants requested a continuance of the December 18, 2019 hearing, and the hearing was rescheduled for January 21, 2020.

7. On December 31, 2019, the Complainants submitted a letter stating that they would be submitting an amended complaint and requesting a litigation schedule with additional time.

8. Met-Ed was served with the Amended Complaint by Secretarial Letter dated January 17, 2020.

9. Based on the filing of the Amended Complaint, the hearing scheduled for January 21, 2020 was cancelled.

10. On February 6, 2020, Met-Ed filed an Answer and New Matter to the Amended Complaint.

11. On February 25, 2020, the Complainants filed a Reply to Met-Ed's Answer and New Matter.

12. On March 31, 2020, the Complainants submitted the written direct testimony and exhibits of Sylvia Bolte.

13. On April 14, 2020, Met-Ed submitted the written rebuttal testimony of John Ahr.

14. The parties waived participation in an evidentiary hearing and agreed that the parties' written testimony and exhibits would be admitted to the record subject to any written objections filed by the parties. By email dated April 24, 2020, the ALJ instructed the parties to submit any objections by May 1, 2020. That deadline was subsequently extended to May 8, 2020.

15. Met-Ed hereby submits these objections to the Complainants' written testimony and exhibits.

## **II. OBJECTIONS**

### **A. OBJECTIONS TO TESTIMONY**

16. Met-Ed objects to the following portion of Ms. Bolte's testimony: "I am again asking that Met-Ed not shut off the power and not install a smart meter on my house because: A. of the adverse physical symptoms I experience when exposed to signals like the ones emitted by smart meters."<sup>1</sup> Ms. Bolte has not demonstrated the qualifications necessary to offer an expert opinion attributing adverse health effects or physical symptoms to the smart meter that Met-Ed proposes to install. Although the Pennsylvania Rules of Evidence are not strictly adhered to at the Commission, the Pennsylvania Supreme Court has unequivocally stated that any relaxation of the rules of evidence in administrative settings cannot allow lay witnesses to testify to technical matters "without personal knowledge or specialized training."<sup>2</sup> Lay witness testimony only carries evidentiary weight where the witness has actually perceived the situation, and the opinion is not

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<sup>1</sup> See Bolte Direct Testimony, p. 1.

<sup>2</sup> *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602, 701 and 702 generally applicable in agency proceedings).

based on scientific, technical or specialized knowledge.<sup>3</sup> As such, all lay testimony from the Complainant related to more specialized topics, including health and radio frequency, should be disregarded and given no evidentiary weight under the Pennsylvania Rules of Evidence.

## **B. OBJECTIONS TO EXHIBITS**

17. As summarized below, the following exhibits should be excluded from the record because they are objectionable on several grounds, including hearsay, relevance, authenticity, inherent unreliability.

- Exhibit 1 – Electromagnetic Sensitivity webpage on Health Trust website

Objections: (1) inadmissible hearsay on medical and scientific issues; (2) hearsay within hearsay when quotes from other reports and websites; (3) relevance—does not deal with RF fields from smart meters being used by Met-Ed; (4) inherent unreliability (only select portions of the webpage are offered as evidence); (5) authenticity

- Exhibit 2 – Martin Pall article

Objections: inadmissible hearsay on medical and scientific issues

- Exhibit 3 – De Luca article

Objections: (1) inadmissible hearsay on medical and scientific issues; (2) relevance – does not deal with RF fields from smart meters being used by Met-Ed; (3) authenticity

- Exhibit 4 – letter from neurologist

At 10:27 p.m. on May 7, 2020, the day before the due date for these objections, Ms. Bolte sent an email to counsel for Met-Ed and the ALJ attaching a letter from her neurologist. The letter is not dated, and it is unclear when the letter was prepared. The Complainants' exhibits were due on March 31, 2020. Ms. Bolte does not offer any reason as to why the exhibit could not have been submitted earlier or why the late exhibit should be accepted. This late exhibit should be given little to no evidentiary weight. Met-Ed did not have an opportunity to cross-examine the purported author of the letter and no foundation for the letter has been established. Further, the letter is speculative with respect to its conclusions as to Ms. Bolte and inappropriately refers to findings from "peer reviewed scientific literature" without specifying which scientific literature is being relied upon.

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<sup>3</sup> Pa.R.E. 701.

Objections: (1) inadmissible hearsay (neurologist did not testify and Met-Ed did not have an opportunity to cross examine); (2) authenticity

- Exhibit 6 – Barrie Trower declaration

Objections: (1) inadmissible hearsay; (2) hearsay within hearsay when quotes from other sources; (3) relevance – appears to be a declaration used in an Oregon civil proceeding and does not deal with the smart meters being used by Met-Ed; (4) authenticity

- Exhibit 7 – article regarding the Fourth Amendment

Objections: (1) hearsay; (2) inherent unreliability (the article does not provide an author); (3) relevance – does not deal with privacy as it relates to Met-Ed’s smart meters

- Exhibit 8 – Smart Meter Data: Privacy and Cybersecurity

Objections: (1) hearsay; (2) authenticity

- Exhibit 9 – article re 7<sup>th</sup> Circuit Decision

Objections: (1) hearsay; (2) authenticity

- Exhibit 20 – International Journal of Molecular Sciences Article

Objections: (1) hearsay on medical and scientific issues; (2) relevance—does not deal with RF fields from smart meters being used by Met-Ed; (3) authenticity

**C. THE COMPLAINANT HAS SUBMITTED EXHIBITS THAT SHOULD BE EXCLUDED OR FOUND TO BE UNPERSUASIVE BECAUSE THEY ARE HEARSAY**

18. The Complainant has submitted exhibits that should be excluded from the record, or at the least given little to no weight, in this proceeding because they are hearsay statements<sup>4</sup> and not subject to a hearsay exception.

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<sup>4</sup> Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Pa.R.E. 801; *Bonegre v. Workers’ Compensation Appeal Board (Bertolini’s)*, 863 A.2d 68, 72 (Pa. Cmwlth. 2004). Ordinarily, hearsay evidence is inadmissible unless some exception applies. Pa.R.E. 802. The hearsay rule is somewhat relaxed in proceedings before administrative agencies. *Rox Coal Co. v. Workers’ Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002). The Commonwealth Court established what is commonly called the “Walker Rule” to apply to the use of hearsay evidence during administrative proceedings:

(1) Hearsay evidence, properly objected to, is not competent evidence to support a finding;

19. Several of the Complainant's exhibits constitute or contain hearsay because they include out of court statements being offered for the truth of the matter asserted. In addition, some of the exhibits contain hearsay within hearsay, for which no exception to either layer of hearsay exists.

20. Many of the exhibits quote, cite or reference statements that were not written by the Complainant. Moreover, the Complainant did not call any individuals, such as the authors of these various materials, to testify at the hearing and authenticate the statements therein. Therefore, these are out of court statements being offered for the truth of the matters asserted.

21. The materials that the Complainant seeks to admit are hearsay statements and are inadmissible unless subject to a hearsay exception. In addition, many of the proposed exhibits are hearsay within hearsay, because the documents purport to quote from and/or characterize the views of third-parties.

22. An exception to the hearsay rule is that an expert may express an opinion that is based on material not in evidence, including other expert opinions, where such material is of a type customarily relied on by experts in his or her profession. *See Lower Makefield Twp. v. Lands of Dalgewicz*, 4 A.3d 1114, 1122 (Pa. Cmwlth. 2010), *affirmed*, 67 A.3d 772 (Pa. 2013); *Collins v. Cooper*, 746 A.2d 615, 618 (Pa. Super. 2000); *Primavera v. Celotex Corp.*, 608 A.2d 515, 520-21

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(2) Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding, if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand.

*Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976). The "Walker Rule" has been affirmed by the Pennsylvania Supreme Court. *Rox Coal Co. v. Workers' Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002).

(Pa. Super. 1992); Pa.R.E. 703.<sup>5</sup> Here, however, the Complainant did not offer any expert witness testimony.

23. Even if these materials are allowed to form the basis of the Complainant's opinion, these materials should not ordinarily be submitted into the record, and as such, should not be given any weight. *See Klein v. Aronchick*, 85 A.3d 487, 503-04 (Pa. Super. 2014) (citing *Aldridge v. Edmunds*, 750 A.2d 292, 297-98 (Pa. 2000)). Although hearsay statements, such as articles, studies, and treatises, can be relied upon by expert witnesses in forming their opinions, the hearsay statements are not permitted to be entered into the record to prove the truth of the matter asserted. *See id.*; *Nigro v. Remington Arms Co.*, 637 A.2d 983, 993 (Pa. Super. 1993) (citations omitted). Thus, the exhibits should be given little to no weight when reaching a determination in this proceeding.

24. For these reasons, Met-Ed objects to the admission of the above-identified exhibits as inadmissible hearsay and asks that the referenced materials should be given little to no weight in the determination of an outcome in this matter. To the extent any significant reliance upon these materials would occur, Met-Ed's due process rights would be violated because the Company did not have the opportunity to cross-examine the individuals who actually authored these materials and statements.

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<sup>5</sup> An expert may base his or her opinion on facts made known to the expert; "[t]hat those facts were in part hearsay does not invalidate the expert's opinion. *See Steinhauer v. Wilson*, 485 A.2d 477, 479 (Pa. Super. 1984). However, Pennsylvania Rule of Evidence 705 requires an expert to disclose to the fact-finder the facts or data on which the opinion is based. Pa.R.E. 705 ("If an expert states an opinion the expert must state the facts or data on which the opinion is based.").

**D. THE COMPLAINANTS' EXHIBITS SHOULD BE EXCLUDED OR DENIED WEIGHT BECAUSE THEY ARE IRRELEVANT, LACK AUTHENTICITY, AND INHERENTLY UNRELIABLE**

25. As noted above, many of Complainant's proposed exhibits also are inadmissible due to other significant flaws, including relevance,<sup>6</sup> authenticity,<sup>7</sup> and inherent unreliability.<sup>8</sup>

26. First, the contents of many of the proposed exhibits are irrelevant because they address exposures other than the RF fields from the AMI meters being used by Met-Ed and do not address issues relevant to the installation of AMI meters in Pennsylvania.

27. Second, some of the Complainant's proposed exhibits lack authenticity and are inherently unreliable because they are incomplete portions of documents or are documents from unknown authors. Certain of those documents appear to have sourced from the websites of anti-EMF/RF advocacy groups. These types of anonymous and/or advocacy materials cannot be relied on as providing reliable and balanced statements about medical and scientific issues.

28. For these reasons, the Complainants' exhibits identified above should not be relied upon when reaching a determination because they are irrelevant, lack authenticity, and are inherently unreliable.

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<sup>6</sup> See Pa.R.E. 401 ("Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action."); *Ecker v. Amtrak*, 2015 Phila. Ct. Com. Pl. LEXIS 98 (Mar. 13, 2015), *affirmed*, 2015 Pa. Super. Unpub. LEXIS 3615 (Pa. Super. 2015); *Parr v. Ford Motor Co.*, 109 A.3d 682 (Pa. Super. 2014), *appeal denied*, 2015 Pa. LEXIS 1150 (Pa. 2015). Even if evidence is relevant, such evidence may be excluded "if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." *Parr*, 109 A.3d at 697 (quoting Pa.R.E. 403).

<sup>7</sup> See Pa.R.E. 901(a) ("To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is."). Indeed, "[w]hen a party offers evidence contending either expressly or impliedly that the evidence is connected with a person, place, thing, or event, the party must provide evidence sufficient to support a finding of the contended connection." Pa.R.E. 901, cmt. (citing *Commonwealth v. Hudson*, 414 A.2d 1381 (Pa. 1980); *Commonwealth v. Pollock*, 606 A.2d 500 (Pa. Super. 1992)).

<sup>8</sup> See *Blum v. Merrell Dow Pharms., Inc.*, 705 A.2d 1314, 1325 (Pa. Super. 1997) (excluding expert testimony because the "analysis was so flawed as to render [the expert's] conclusions unreliable and therefore inadmissible"), *affirmed*, 764 A.2d 1 (Pa. 2000).



### III. CONCLUSION

WHEREFORE, Metropolitan Edison Company respectfully requests that Administrative Law Judge Benjamin Myers consider its Objections and refrain from relying upon certain exhibits and portions of the testimony submitted by the Complainants when reaching a determination in this proceeding, as explained above.

Respectfully submitted,



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Counsel for Metropolitan Edison Company

Dated: May 8, 2020

**BEFORE THE  
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	:	
Respondent.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Objections of Metropolitan Edison Company to the Complainants' Written Testimony and Exhibits 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 mail, postage prepaid, as follows:

Charles and Sylvia Bolte  
forestnyc@hotmail.com

Administrative Law Judge Benjamin Myers  
benmyers@pa.gov

Dated: May 8, 2020



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