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June 5, 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: Liza Mousios and Roy Cumming v. Metropolitan Edison Company**  
**Docket Nos. C-2019-3007989, C-2019-3007995**

Dear Secretary Chiavetta:

Enclosed please find the answer of Metropolitan Edison Company to the June 1, 2020 Motion to Stay and the June 4, 2020 Motion to Recuse submitted by Liza Mousios and Roy Cumming with regard to the above-captioned matter.

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

Very truly yours,



Tori L. Giesler

Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Liza Mousios and Roy Cumming,</b>	:	
	:	
<b>Complainants,</b>	:	
	:	
v.	:	<b>Docket Nos. C-2019-3007989</b>
	:	<b>C-2019-3007995</b>
<b>Metropolitan Edison Company,</b>	:	
	:	
<b>Respondent.</b>	:	

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**ANSWER OF METROPOLITAN EDISON COMPANY TO THE  
JUNE 1, 2020 MOTION TO STAY AND THE  
JUNE 4, 2020 MOTION TO RECUSE  
SUBMITTED BY LIZA MOUSIOS AND ROY CUMMING**

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**TO ADMINISTRATIVE LAW JUDGE DARLENE D. HEEP:**

Pursuant to 52 Pa. Code § 5.61, Metropolitan Edison Company (“Met-Ed” or the “Company”) hereby files this Answer to the “Motion to Stay” and the “Motion to Recuse”<sup>1</sup> (collectively “Motions”), which were submitted by Liza Mousios and Roy Cumming (“Complainants”) on June 1, 2020, and June 4, 2020, respectively, in the above-captioned proceeding. In the Motion to Stay, the Complainants request that the proceeding be stayed pending outcome the Commonwealth Court issues its Order in *Povacz, et al. v. Pa. PUC*,<sup>2</sup> *Paul, M. v. PUC*,<sup>3</sup> *Hoffman-Lorah, E. v. PUC*,<sup>4</sup> *Mcknight, h/w v. PUC*,<sup>5</sup> *Myers, R. v. PUC*,<sup>6</sup> *Sunstein*

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<sup>1</sup> Although titled a “Motion to Recuse” by the Complainants, the Company notes that the proper form of this motion appears to be a “motion for disqualification” under 52 Pa. Code § 5.348.

<sup>2</sup> The *Povacz v. Pa. PUC* matter consists of three consolidated appeals. They are: (1) *Povacz v. Pa. PUC*, No. 492 C.D. 2019; (2) *Murphy v. Pa. PUC*, No. 606 C.D. 2019; and (3) *Randall, et al. v. Pa. PUC*, No. 607 C.D. 2019.

<sup>3</sup> No. 460 C.D. 2019.

<sup>4</sup> No. 712 C.D. 2019.

<sup>5</sup> No. 1253 C.D. 2019.

<sup>6</sup> No. 1337 C.D. 2019.

*h/w v. PUC*,<sup>7</sup> *Branagh, J v. PUC*,<sup>8</sup> and *Hanley, Orpheus and Kimberly v. PUC*.<sup>9</sup> The Complainants also baselessly assert lack of impartiality on behalf of the Administrative Law Judge Darlene D. Heep (“ALJ Heep”) and reference complications with witness availability related to the ongoing issues with the coronavirus (“COVID-19”) as support for their requested stay.

As explained herein, Met-Ed opposes a further stay of this proceeding. Importantly, on April 14, 2020, ALJ Heep issued an Order Extending Time which modified the discovery and testimony deadlines in this proceeding in light of the various stay-at-home orders related to COVID-19 and provides the Complainants with adequate time to coordinate the preparation and submission of written testimony by their expert witness. In addition, Met-Ed notes that this Motion is the latest attempt by the Complainants in this proceeding, including: (1) the Complainants’ request for additional time to retain witnesses and respond to Met-Ed’s Motion to Compel, which was disposed of in the July 24, 2019 Interim Order Extending Deadlines for Complainants to Submit Witness Information and File A Response to Respondent’s Motion to Compel; (2) the Complainant’s November 20, 2019 Motion to Delay; and (3) the Complainant’s January 3, 2020 Motion to Stay. The Complainants have been afforded adequate time to coordinate the preparation and submission of written testimony by their witness.

Furthermore, Met-Ed opposes the Complainants’ request to stay this proceeding pending the outcomes of the Commonwealth Court’s decisions in *Povacz, Paul, Hoffman-Lorah, Mcknight, Myers, Sunstein, Branagh, and Hanley*. No reason exists to postpone the hearings in this case due to these appeals pending before the Commonwealth Court. This case has been in litigation for over 14 months and must finally proceed in accordance with the schedule set forth

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<sup>7</sup> No. 1581 C.D. 2019.

<sup>8</sup> No. 1857 C.D. 2019

<sup>9</sup> No. 172 C.D. 2020.

in ALJ Heep's April 14, 2020 Order Extending Time. Indeed, by the time the Court issues a decision in the aforementioned appeals, it is unlikely that the Commission will have issued its final order in this case. Moreover, nothing guarantees that the Court's decision in any of the aforementioned appeals will be controlling of some or all of the issues in this case. Therefore, judicial economy demands that this case proceed in accordance with the schedule set forth in ALJ Heep's April 14, 2020 Order Extending Time, and that the Complainants' latest attempt to delay these proceedings be denied.

As to the Complainant's request that ALJ Heep recuse herself from these proceedings, this additional request is meritless. The Complainant's Motion to Recuse ALJ Heep is fundamentally defective; it contains no "affidavits alleging personal bias or other disqualification" in conformance with the Commission's regulations. 52 Pa. Code § 5.482(a). In addition, the grounds alleged in support of recusal misrepresent the record and are no more than baseless ad hominem attacks upon ALJ Heep. Therefore, the Complainants' Motion to Recuse should be summarily rejected.

In support of its Answer, Met-Ed states as follows:

**I. INTRODUCTION**

1. On February 11, 2019, each of the Complainants filed separate Formal Complaints with the Pennsylvania Public Utility Commission ("Commission") regarding 68 Marienstein Road, Revere, Pennsylvania 18953, which were both electronically served on the Company on February 21, 2019.

2. On March 13, 2019, the Company filed its Answer and New Matter denying the material allegations of both Formal Complaints. On that same day, the Company also filed Preliminary Objections to both Formal Complaints.

3. On March 28, 2019, each Complainant filed an identical response to the Company's Answer and New Matter to their respective Formal Complaint.

4. On April 20, 2019, the Complainants filed a joint pleading titled "Response and Preliminary Objections to Metropolitan Edison Company" in response to the Company's Preliminary Objections and raised their own objections.

5. On April 23, 2019, a Motion Judge Assignment Notice was issued assigning Administrative Law Judge ("ALJ") Emily I. DeVoe to both proceedings.

6. On May 14, 2019, ALJ DeVoe issued an Interim Order consolidating the Formal Complaints filed by each of the Complainants.

7. May 15, 2019, ALJ DeVoe issued a Corrected Interim Order granting in part and denying in part the Company's Preliminary Objections

8. On May 16, 2019, ALJ DeVoe issued an Interim Order denying the Complainants' Preliminary Objections.

9. On May 20, 2019, a Call-In Telephone Pre-Hearing Conference Notice was issued scheduling a prehearing conference for July 23, 2019 for the consolidated Formal Complaints.

10. On May 22, 2019, ALJ DeVoe issued an Interim Order Scheduling a Prehearing Conference for July 23, 2019.

11. On May 31, 2019, in accordance with 52 Pa. Code § 5.341, the Company forwarded to the Complainants interrogatories and document requests ("Company's Set I Discovery Requests") via first class mail. In its Discovery Requests, the Company sought information and documents related to the Complainants' allegations regarding the Company's smart meters.

12. On June 17, 2019, ALJ DeVoe received correspondence from the Complainants, which was not served upon the Company, wherein they request that the prehearing conference be cancelled and that the matter proceed to a hearing.

13. On June 20, 2019, ALJ DeVoe issued an Interim Order ordering the parties to appear for and participate in the prehearing conference scheduled for July 23, 2019.

14. On July 22, 2019, the Company filed a Motion to Compel.

15. On July 23, 2019, a prehearing conference was held and all parties participated.

16. On July 24, 2019, an Interim Order which extended the deadlines for the Complainants to submit witness information and file a response to the Company's Motion to Compel.

17. On July 26, 2019, the Complainants re-served their discovery responses to the Company's Set I Discovery Requests upon the Company along with proof of mailing from her original submission.

18. By letter dated August 23, 2019, which was received on August 30, 2019, the Complainants forwarded to the Company a set of interrogatories ("Complainants' Set I Discovery Requests").

19. On August 28, 2019, an Interim Order was entered which required the submission of a status report.

20. On September 3, 2019, in accordance with 52 Pa. Code § 5.341, the Company forwarded to the Complainants a second set of interrogatories and document requests ("Company's Set II Discovery Requests") via first class mail.

21. On September 5, 2019, the Company's Motion to Compel was dismissed as moot per an Interim Order.

22. On September 9, 2019, the Company submitted objections to portions of Complainants' Set I Discovery Requests.

23. On September 10, 2019, the Company re-submitted the Company's Discovery Requests, Set I.

24. On September 4, 2019, the Company submitted a status report.

25. On September 20, 2019, the Company submitted an additional status report.

26. On September 23, 2019, the Company submitted responses to the Complainants' Set I Discovery Requests.

27. On October 1, 2019, a Call In Evidentiary Hearing Telephonic Notice was issued.

28. On October 4, 2019, a Prehearing Order was issued.

29. On October 18, 2019, the Company served its proposed exhibits.

30. Also on October 18, 2019, the Complainants filed a "Motion Per our Second Request for Our Inexorable Right to Have an In-Person Hearing with Americans with Disabilities Act Accommodations Removing All Wireless from the Hearing Area."

31. On October 22, 2019, a Hearing Cancellation/Reschedule and a Judge Change Notification was issued.

32. On November 20, 2019, the Complainants filed a "Motion to Delay Our Hearing Until the Outcome of the Pending Ten Appeals Against the Pernicious Smart Meters."

33. On December 13, 2019, a Prehearing Order was issued which denied the Complainants' request to delay the evidentiary hearing.

34. On January 3, 2020, the Complainants filed a "Motion to Stay the Hearing Given the Ensuing Facts for the Orderly Proceeding of Justice."

35. On January 7, 2020, the Company submitted its proposed exhibits.

36. On January 9, 2020, an Order was entered which, *inter alia*, denied the Complainants' Motion to Stay the Hearing, deeming the Complainants' request for accommodation at hearing moot, cancelled the in-person hearing scheduled for January 14 and 15, 2020, and directed a modified procedural schedule with a modified discovery schedule. Further, a Call-In Telephone Hearing Notice was issued.

37. On January 14, 2020, a Cancellation Notice was issued which cancelled the evidentiary hearings scheduled for January 14 and 15, 2020.

38. On January 15, 2020, the Complainants filed a "Motion to Supplement Exhibits for Continuing In-Writing Hearing."

39. On January 17, 2019, the Complainants filed what was labeled as a brief.

40. On January 28, 2020, in accordance with 52 Pa. Code § 5.341, the Company forwarded to the Complainants a third set of interrogatories and document requests ("Company's Set III Discovery Requests") via first class mail and UPS Overnight Delivery.

41. On January 29, 2020, the Complainants filed a "Motion for Judge Heep to Vacate Her Own Violation of Complainants' Right to Due Process and Right to Preserve Their Issues on Appeal In Her Preventing Their Use of Their Expert Witness" and "Motion and Request to Deputy Chief Administrative Law Judge Christopher Pell for a Different Judge Such As Administrative Judge DeVoe Whom We Previously Had."

42. On January 30, 2020, the Company filed a response to the Complainants' Motions.

43. On January 31, 2020, ALJ Heep issued an Order which, *inter alia*, denied the Complainants' motion to disqualify a presiding officer and grant the Complainants' motion for additional time to submit testimony and exhibits of their expert witness, William Bathgate.

44. On February 10, 2020, Met-Ed filed a Motion to Compel responses to the Company's Set III Discovery Requests. At the time it was filed, the Complainants had neither objected nor responded to any of the Company's Set III Discovery Requests.

45. On February 14, 2020, Met-Ed received a document entitled "Answers to Interrogatories Set III" from the Complainants. Also on February 14, 2020, the Complainants filed an Answer to Motion to Compel

46. On February 19, 2020, Met-Ed filed an Amended Motion to Compel.

47. On February 21, 2020, the Complainants filed an Amended Motion to Quash Met-Ed's Motion to Compel.

48. On February 25, 2020, ALJ Heep issued an Order which granted in part Met-Ed's Motion to Compel.

49. On March 2, 2020, the Complainants filed a Further Motion to Amend Motion to Compel.

50. On March 12, 2020, the Complainants filed a document entitled "Responses Pursuant to Motion to Compel of Interrogatories."

51. On March 17, 2020, the Commission issued a Hearing Cancellation Notice, which cancelled the Call-In Telephonic Hearing Scheduled for March 30, 2020.

52. On March 19, 2020, Met-Ed filed a letter indicating that, because the Complainants had not yet served direct testimony in accordance with the well-established litigation schedule established in this proceeding, it would not be serving rebuttal testimony at this time.

53. On April 14, 2020, ALJ Heep issued an Order Extending Time which modified the discovery and testimony deadlines in this proceeding in light of the various stay-at-home

orders related to COVID-19. Importantly, the Complainants were provided until July 9, 2020 to submit written testimony and exhibits on behalf of their identified expert witness, Mr. Bathgate.

54. On June 1, 2020, the Complainants emailed the instant Motion to Stay to Deputy Chief Administrative Law Judge Christopher Pell, and forwarded the Motion to Stay separate to ALJ Heep and Met-Ed.

55. On June 4, 2020, the Complainants emailed the instant Motion to Recuse to Deputy Chief Administrative Law Judge Christopher Pell, and forwarded the Motion to Recuse separate to ALJ Heep and Met-Ed.

## **II. ANSWER TO THE COMPLAINANTS' MOTION TO STAY**

56. The Complainants' Motion to Stay should be denied.

57. This proceeding has been underway for over 14 months and the Complainants have previously been provided numerous extensions of time.

58. As explained previously, the ALJ already issued an Order Extending Time, which modified the discovery and testimony deadlines in this proceeding in light of the various stay-at-home orders related to COVID-19. As such, the Complainants have already been provided ample time to coordinate the preparation and submission of written testimony by their expert witness

59. Although the Complainants aver that Mr. Bathgate is located in Michigan, which is still subject to stay-at-home orders due to COVID-19, the Order Extending Time only requires the Complainants to submit Mr. Bathgate's written direct testimony. This process can be achieved electronically, and the Complainants demonstrated that they have access to (and are able to use electronic mail) by submitting the instant Motion to the Commission and Met-Ed via e-mail. As such, the Complainants' assertion that "Mr. Bathgate is unwilling to make the trip to Pennsylvania at this time" is a non-sequitur.

60. Furthermore, the Complainants' request to stay the proceeding until the disposition of the pending *Povacz, Paul, Hoffman-Lorah, Mcknight, Myers, Sunstein, Branagh,* and *Hanley* appeals before the Commonwealth Court should also be rejected.

61. As alleged support, the Complainants contend that their requested stay should be granted in the "keeping with their rights to due process." (Motion to Stay ¶ 2.) This assertion is misplaced.

62. The Complainants are not parties to any of the pending appeals. They are, however, a party to this proceeding and have been afforded due process. The Complainants have been permitted to engage in discovery and identify witnesses, and will be afforded the opportunity to present the testimony of those witnesses under the schedule set forth in the Order Extending Time. It is simply not necessary to provide the Complainants with an additional extension in order for them to be afforded due process.

63. Furthermore, the Complainants' reliance on smart meter appeals being stayed pending the Commonwealth Court's disposition of the *Povacz, Paul, Hoffman-Lorah, Mcknight, Myers, Sunstein, Branagh,* and *Hanley* appeals lacks merit.

64. By the time the Commonwealth Court issues its decision in any (or all) of these cases, it is unlikely that the Commission will have issued its final order in this case.

65. Moreover, the Complainants' request presumes that the Court's ruling will be dispositive, or at least have an impact, on the instant proceeding. However, nothing guarantees that the Court's decision in those proceedings will be controlling of some or all of the issues in this case.

66. Additionally, the factual record in the each of the aforementioned appeals was previously established before the Commission. On the other hand, the Complainants here are

attempting to unduly delay the establishment of a complete factual record. Nothing supports the Complainants' request to unnecessarily postpone the evidentiary hearings.

67. In addition, ALJ Heep previously rejected this same argument as grounds for granting the Complainants a stay in this proceeding. In the January 9, 2020 Order denying the Complainants' prior Motion to Stay, ALJ Heep explicitly rejected the Complainants' argument that a stay was warranted due to the pending appeal of another case. January 9, 2020 Order at 2.

68. Therefore, judicial economy demands that this case, which was initiated over 14 months ago, proceed in accordance with the schedule set forth in the Order Extending Time so that a factual record may be developed.

69. Finally, to the extent that the Complainants have alleged that ALJ Heep or the Commission have been impartial in this proceeding, these allegations are baseless and should be rejected.

70. Based on the foregoing, the Complainants' Motion to Stay should be denied.

### **III. ANSWER TO MOTION TO RECUSE**

71. The Complainants' Motion to Recuse is similarly without merit and should be rejected.

72. As an initial matter, Met-Ed notes that Section 5.482(a) of the Commission's regulations requires "affidavits alleging personal bias or other disqualification" to accompany a motion to for disqualification of the presiding officer. 52 Pa. Code § 5.482(a). The Complainants have failed to include notarized affidavits alleging personal bias or other disqualification. Rather, as explained below, their unverified e-mail request misrepresents the record and constitutes little more than baseless ad hominem attacks against the ALJ.

73. The Complainants first assert that "In December 2019, Judge Heep granted the respondents' objections in three days, failing to allow time for the Complainants to file a

response.” Motion for Recusal, ¶ 1. However, the Complainants do not identify what Order issued by ALJ Heep is being disputed and do not explain how such Order evidences “personal bias or other disqualification.” To the extent the Complainants are disputing the December 13, 2019 Prehearing Order, which denied the Complainants’ Motion for Delay filed on November 20, 2019, the Complainants have patently misrepresented the timing of their motion and the timing of ALJ Heep’s ruling. As such, this ground for disqualification should be rejected.

74. The Complainants then argue “Judge Heep granted respondents’ Motion to compel Complainants’ Answers to Interrogatories despite the fact they were already answered by Cumming and Mousios per Respondents’ inchoate, misspelled and nearly illiterate Interrogatories.” Motion for Recusal, ¶ 2. Again, the Complainants do not identify what specific Order issued by Judge Heep is being disputed and do not explain how such Order evidences “personal bias or other disqualification.”

75. To the extent that the Complainants are disputing ALJ Heep’s February 25, 2020 Order Granting the Motion to Compel of Metropolitan Edison Company, the Complainants again misrepresent the record. Importantly, on February 10, 2020, Met-Ed filed a Motion to Compel responses to the Company’s Set III Discovery Requests. At the time it was filed, the Complainants had **neither objected nor responded to any of the Company’s Set III Discovery Requests**. On February 14, 2020, Met-Ed received a document entitled “Answers to Interrogatories Set III” from the Complainants. Therein, the Complainants objected to the Company’s Set III Discovery Requests for the first time and refused to respond to Numbers 4-20 and 22-28 of the Company’s Set III Discovery Requests. The Company thereafter filed an Amended Motion to Compel addressing these objections and refusals to responds on February 19, 2020. ALJ Heep thereafter ruled on the Motion to Compel on February 25, 2020. Any

confusion about the timing of ALJ Heep's ruling on behalf of the Complainants, is solely due to the Complainants' delay in objecting to and responding to the Company's Set III Discovery Requests and, thereafter, filing numerous "pile-on" answers to the Company's Motion to Compel. ALJ Heep's February 25, 2020 Order was proper and the Complainants have simply not demonstrated this ruling satisfies Section 5.438(a).

76. The Complainant next argue that "Judge Heep NEVER ruled on Complainants' Motion to Compel Respondent's Interrogatories." Motion to Recuse, ¶ 3. The Complainants then assert that ALJ Heep did not address this Motion to Compel in subsequent rulings or communications with Complainants. Motion to Recuse, ¶¶ 4-5. However, such a Motion filed by the Complainants does not appear in either of the consolidated dockets in this proceeding.

77. The Complainants finally resort to baseless ad hominem attacks upon ALJ Heep. Motion to Recuse, ¶¶ 6-7. In addition to serving no purpose other than to inflame and disparage ALJ Heep, the Company notes that these statements further evidence the Complainants' clear intent to neither cooperate with the Company nor comply with the Commission's regulations governing the process of this proceeding. These comments represent the latest in a series of efforts by the Complainants to delay this proceeding and blatantly flout the Commission's regulations and ALJ Heep's Orders.

78. For these reasons, the Complainants' Motion to Recuse should be summarily denied.

**III. CONCLUSION**

For the reasons set forth above, Liza Mousios and Roy Cumming's Motion to Stay and Motion to Recuse should be denied, and this proceeding should continue as scheduled in the April 14, 2020 Order Extending Time, without further delay.

Respectfully submitted,



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Date: June 5, 2020

Attorneys for Metropolitan Edison Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Liza Mousios and Roy Cumming,</b>	:	
	:	
<b>Complainants,</b>	:	
	:	
<b>v.</b>	:	<b>Docket Nos. C-2019-3007989</b>
	:	<b>C-2019-3007995</b>
<b>Metropolitan Edison Company,</b>	:	
	:	
<b>Respondent.</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the answer of Metropolitan Edison Company to the June 1, 2020 Motion to Stay and the June 4, 2020 Motion to Recuse submitted by Liza Mousios and Roy Cumming 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, as follows:

Liza Mousios and Roy Cumming  
cumming@epix.net

Administrative Law Judge Darlene Heep  
dheep@pagov.com

Dated: June 5, 2020



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