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June 11, 2020

VIA ELECTRONIC FILING

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

Re: Larry R. and Ellen M. Kramer v. Metropolitan Edison Company
Docket Nos. C-2017-2630621

Dear Secretary Chiavetta:

Enclosed please find the answer of Metropolitan Edison Company to the June 5, 2020 "Response to Interim Order" Filed by Larry R. And Ellen M. Kramer 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**

Larry R. and Ellen M. Kramer,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2017-2630621
	:	
Metropolitan Edison Company,	:	
	:	
Respondent.	:	

**ANSWER OF METROPOLITAN EDISON COMPANY TO THE
JUNE 5, 2020 “RESPONSE TO INTERIM ORDER” FILED BY
LARRY R. AND ELLEN M. KRAMER**

TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:

Pursuant to 52 Pa. Code § 5.61, Metropolitan Edison Company (“Met-Ed” or the “Company”) hereby files this Answer to the “Response to Interim Order” (“Motion”)¹ that was filed by Larry R. and Ellen M. Kramer (“Complainants”) on June 5, 2020, in the above-captioned proceeding. In the Motion, the Complainants allege that: (1) Met-Ed and Mediator Cynthia Lehman participated in *ex parte* communications; (2) Met-Ed failed to reach out to the Complainants to set a resolution conference in accordance with the Interim Order dated January 12, 2018; (3) Administrative Law Judge Jeffrey A. Watson (“ALJ”) should recuse himself from this case; and (4) the June 29, 2020 hearing should be continued for various reasons.

All of the Complainants’ allegations completely lack merit, and their Motion should be denied accordingly. Met-Ed has never participated in any *ex parte* communications, as alleged by the Complainants. Although the June 1, 2018 emails were between Met-Ed and Mediator

¹ Although titled as “Response to Interim Order,” the substance of the pleading and the relief requested indicate that it would be appropriately treated as a Motion filed pursuant to Section 5.103 of the Commission’s regulations. See 52 Pa. Code § 5.103. Therefore, Met-Ed files the instant Answer in response.

Lehman, they concerned procedural matters only. Therefore, those emails were not *ex parte* communications because they did not regard the “merits or any fact in issue of any matter pending before the commission in any contested on-the-record proceeding.” 66 Pa.C.S. § 334(c).

Further, Met-Ed did reach out to the Complainants to try to set a resolution conference. However, it became plainly evident that the Complainants and Met-Ed will be unable to reach a settlement in this case because the Complainants refuse the smart meter’s installation under any circumstances. Accordingly, a resolution conference would be a fruitless exercise. Nonetheless, Met-Ed remains available to discuss settlement with the Complainants before and at the evidentiary hearing.

In addition, nothing supports the Complainants’ baseless request that the ALJ recuse himself from this proceeding. The Complainants’ Motion is fundamentally defective because it contains no “affidavits alleging personal bias or other disqualification” in conformance with the Commission’s regulations. 52 Pa. Code § 5.482(a). Moreover, the grounds alleged in support of recusal misrepresent the record and are little more than baseless ad hominem attacks upon the ALJ.

Finally, Met-Ed opposes a further stay of this proceeding. Met-Ed was originally served with the Formal Complaint on October 24, 2017, *i.e.*, 32 months ago. Since that time, the Complainants have repeatedly tried to delay this case as long as they can. Now, in their latest Motion, the Complainants want to continue the hearing until some undetermined time after a resolution conference in October 2020. The Complainants have had more than sufficient time to prepare for their case, and the reasons proffered in their Motion do not constitute “exigent circumstances” that would warrant a continuance. Also, the hearing will be conducted

telephonically, and the parties' exhibits will be exchanged prior to the hearing. Therefore, the burden to participate in the hearing will be minimal.

For these reasons, the Complainants' Motion is without merit and should be denied. In support of its Answer, Met-Ed states as follows:

I. INTRODUCTION

1. On October 24, 2017, Met-Ed was served with the Formal Complaint filed by the Complainants, contesting the installation of a smart meter at their service address.

2. On November 14, 2017, 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 November 27, 2017, the Complainants filed an Answer to Met-Ed's Preliminary Objections.

4. On December 6, 2017, a Motion Judge Assignment Notice was issued, assigning the ALJ to rule on Met-Ed's Preliminary Objections.

5. On or about December 26, 2017, an Order was issued denying the Company's Preliminary Objections.

6. On January 12, 2018, an Interim Order Setting Resolution Conference was issued, directing the parties to try to hold a conference about resolving the case informally.

7. On February 12, 2018, Met-Ed filed a letter stating that the Complainants objected to all of Met-Ed's discovery requests that were served on January 23, 2018, and that the Company would try to resolve the discovery dispute informally before filing a Motion to Compel. If those efforts proved unsuccessful, Met-Ed reserved its right to file a Motion to Compel.

8. On February 16, 2018, the Company reached out to the Complainants about trying to resolve the case through settlement.

9. On February 26, 2018, the Complainants called back and left a voicemail for Met-Ed in response to Met-Ed's call on February 16, 2018. The Company returned the message but had to leave a voicemail.

10. On June 14, 2018, Met-Ed filed a Motion to Compel responses to its discovery requests.

11. On or about June 25, 2018, the Complainants submitted a letter requesting additional time to respond to Met-Ed's Motion to Compel.

12. By Interim Order dated July 18, 2018, the ALJ granted the Complainants' request and ordered that their response to Met-Ed's Motion to Compel would be due by July 20, 2018.

13. On July 20, 2018, the Complainants sent a response to Met-Ed's Motion to Compel to the ALJ.

14. By Interim Order dated August 30, 2018, the ALJ granted Met-Ed's Motion to Compel and directed the Complainants to provide full and complete responses to the Company's discovery requests by September 14, 2018.

15. The Complainants never served their responses in compliance with the August 30, 2018 Interim Order by September 14, 2018.

16. On October 15, 2018, the ALJ issued an Interim Order Establishing Initial Litigation Schedule.

17. On October 30, 2018, Met-Ed filed a Motion to Dismiss the Formal Complaint due to the Complainants' failure to comply with the August 30, 2018 Interim Order.

18. On December 5, 2018, the ALJ issued an Interim Order holding the Company's Motion to Dismiss in abeyance and directing the Complainants to comply with his previously-issued Interim Orders. Specifically, the Complainants were directed to serve their discovery responses by December 27, 2018.

19. On December 27, 2018, the Complainants served their responses to Met-Ed's discovery requests. However, the Complainants' responses were incomplete.²

20. On January 22, 2019, the Complainants filed a Motion to Compel regarding the Company's objections to the Complainants' discovery requests.

21. On January 23, 2019, the Complainants submitted a request to extend the litigation schedule set forth in the October 15, 2018 Interim Order.

22. On January 30, 2019, Met-Ed filed an Answer to the Complainants' Motion to Compel.

23. January 31, 2019, the ALJ denied the Complainants' January 23, 2019 request to extend the litigation schedule.

24. On February 6, 2019, the ALJ denied Met-Ed's Motion to Dismiss without prejudice, based on the Complainants' representation that they served their discovery responses on December 27, 2018.

25. Also on February 6, 2019, the Complainants submitted a second request to extend the litigation schedule, which was nearly identical to the request made on January 23, 2019.

26. On February 12, 2019, Met-Ed filed a letter in opposition to the Complainants' February 6, 2019 request.

² No supplemental responses have been served, as of the date of filing this Answer. *See* 52 Pa. Code § 5.332 (explaining how parties have a duty to supplement their prior discovery responses).

27. On February 15, 2019, the ALJ issued an Interim Order denying the Complainants' February 6, 2019 request to extend the litigation schedule.

28. On March 9, 2019, the Complainants filed a Motion to Compel a response to Interrogatory 62 of their second set of discovery requests, to the Company objected providing a response.

29. On March 18, 2019, Met-Ed filed an Answer in opposition to the Complainants' March 9, 2019 Motion to Compel.

30. On April 4, 2019, the ALJ issued an Interim Order denying the Complainants' Motion to Compel filed on March 9, 2019.

31. On May 10, 2019, Met-Ed filed a status report in accordance with the October 15, 2018 Interim Order.

32. On June 17, 2019, the Complainants filed a Motion to Compel seeking to dismiss the Company's objections and compel responses to certain interrogatories in the Complainants' fourth set of discovery requests. Met-Ed did not receive the Complainants' Motion until June 24, 2019.

33. On June 25, 2019, Met-Ed filed an Answer in opposition to the Complainants' June 17, 2019 Motion to Compel.

34. On December 6, 2019, the ALJ issued an Interim Order denying the Complainants' June 17, 2019 Motion to Compel.

35. On December 18, 2019, the Complainants filed a Request for Reconsideration of their June 17, 2019 Motion to Compel.

36. On March 6, 2020, the ALJ issued an Interim Order denying the Complainants' Request for Reconsideration filed on December 18, 2019.

37. Also on March 6, 2020, the ALJ issued an Interim Order requiring the parties to provide status reports, by no later than March 18, 2020, which include dates and proposed locations for an evidentiary hearing anticipated to be held in June 2020.

38. On March 18, 2020, the parties filed their status reports. The Complainants' status report failed to provide the dates and proposed locations for an evidentiary hearing. Instead, their status report set forth many of the same allegations contained in their pending Motion, *e.g.*, that Met-Ed failed to comply with the Interim Order Setting Resolution Conference and that the Company participated in *ex parte* communications.

39. On May 26, 2020, a Notice was issued scheduling a telephonic evidentiary hearing for June 29, 2020, before the ALJ.

40. That same day, the ALJ issued a Prehearing Order for the telephonic hearing, which set forth various procedural rules and requirements for the proceeding and information about participating in the telephonic hearing.

41. Later on May 26, 2020, the Complainants filed a "Response to Interim Order of May 26, 2020," alleging that: (1) Met-Ed and Mediator Cynthia Lehman participated in *ex parte* communications; (2) Met-Ed failed to reach out to the Complainants to set a resolution conference in accordance with the Interim Order dated January 12, 2018; (3) the ALJ should recuse himself from this case; and (4) the June 29, 2020 hearing should be continued for various reasons.

II. ANSWER TO THE COMPLAINANTS' MOTION

42. All of the Complainants' allegations completely lack merit, and their Motion should be denied accordingly.

43. First, Met-Ed has never participated in any *ex parte* communications, as alleged by the Complainants in their Motion. (*See* Motion, pp. 1-3.)

44. Under Section 334(c) of the Public Utility Code, an *ex parte* communication is defined as follows:

Ex parte communications prohibited in this section shall mean any off-the-record communications to or by any member of the commission, administrative law judge, or employee of the commission, regarding the merits or any fact in issue of any matter pending before the commission in any contested on-the-record proceeding. Contested on-the-record proceeding means a proceeding required by a statute, constitution, published commission rule or regulation or order in a particular case, to be decided on the basis of the record of a commission hearing, and in which a protest or a petition or notice to intervene in opposition to requested commission action has been filed. This subsection does not prohibit off-the-record communications to or by any employee of the commission prior to the actual beginning of hearings in a contested on-the-record proceeding when such communications are solely for the purpose of seeking clarification of or corrections in evidentiary materials intended for use in the subsequent hearings.

66 Pa.C.S. § 334(c).

45. Here, although the June 1, 2018 emails were between Met-Ed and Mediator Lehman, they concerned procedural matters only. Indeed, by the Complainants' own admission, the communications involved Met-Ed informing Mediator Lehman about the status of the Company's efforts to contact the Complainants about settlement and moving the case to the evidentiary hearing process. Therefore, those emails were not *ex parte* communications because they did not regard the "merits or any fact in issue of any matter pending before the commission in any contested on-the-record proceeding." *Id.*

46. Moreover, even assuming *arguendo* that those emails could be considered *ex parte* communications, the remedy for such communications is for them to be disclosed to the other party.³ Obviously, the Complainants have those communications in their possession

³ See, e.g., *Pa. PUC v. Pa. Elec. Co.*, 1980 Pa. PUC LEXIS 5, at *8 (Order entered Dec. 4, 1980) (noting that "written ex parte communications can be cured by sending copies to all parties"); *In re Bell Atlantic – Pa., Inc.'s Petition and Plan for Alternative Form of Regulation under Chapter 30*, 1994 Pa. PUC LEXIS 142, at *17

because they quote them in their March 18, 2020 status report. (*See* Complainants’ March 18, 2020 Status Report ¶¶ 19-22.) Thus, this issue, if one ever existed, has been rendered completely moot.

47. Second, the Complainants’ allegations about scheduling a resolution conference should be rejected. By the Complainants’ own admission, Met-Ed did reach out to the Complainants to try to set a resolution conference. (*See* Complainants’ March 18, 2020 Status Report ¶ 16.) However, it became plainly evident that the Complainants and Met-Ed would be unable to reach a settlement in this case because the Complainants refuse the smart meter’s installation under any circumstances. Accordingly, a resolution conference would be a fruitless exercise.

48. Nonetheless, Met-Ed remains available to discuss settlement with the Complainants before and at the evidentiary hearing. No need exists, however, to delay the hearing to accommodate such a resolution conference taking place months from now in October 2020. Indeed, the parties have two weeks before the June 25, 2020 evidentiary hearing. It is inconceivable that the Complainants would not have any time between now and the evidentiary hearing to communicate their settlement position to Met-Ed. Thus, the Complainants’ issues regarding the scheduling a resolution conference are without merit.

49. Third, nothing supports the Complainants’ baseless request that the ALJ recuse himself from this proceeding. The Complainants’ Motion is fundamentally defective because it contains no “affidavits alleging personal bias or other disqualification” in conformance with the

(Order entered June 28, 1994) (observing how “the communications, which were made to Commissioners or advisory staff, may have constituted *ex parte* communications,” so “accordingly, the documents were being disclosed to the parties”); *Mitchell v. UGI Utilities, Inc.*, 2011 Pa. PUC LEXIS 615, at *4-5 (Dec. 7, 2011) (Initial Decision) (stating that the Administrative Law Judge Salapa “served copies of the letters on counsel for the Respondent since the letters could be construed as *ex parte* communications”), *adopted without modification*, Docket No. C-2011-2260123 (Order entered Jan. 27, 2012).

Commission's regulations. 52 Pa. Code § 5.482(a). For that reason alone, their Motion should be denied.

50. Moreover, their alleged grounds for recusal are that the ALJ “does not seem to be reading any of [their] submitted documentation” and that “he is unable to process [their] documentation in a timely fashion.” (Motion, p. 3.) Absolutely nothing in the record supports these allegations. A simple review of the docket shows that the ALJ always reviews the Complainants' filings and rules on them accordingly. Thus, the Complainants' alleged grounds in support of recusal misrepresent the record and are little more than baseless ad hominem attacks upon the ALJ.

51. Fourth, the ALJ should deny the Complainants' request to continue the hearing until some undetermined time after a resolution conference is held in October 2020. Met-Ed was originally served with the Formal Complaint on October 24, 2017, *i.e.*, 32 months ago. Since that time, the Complainants have repeatedly tried to delay this case for meritless reasons. Indeed, this marks the third time that the Complainants have formally requested an extension to the litigation schedule.

52. The Complainants have had more than sufficient time to prepare for their case. As mentioned previously, the Formal Complaint was served 32 months ago. Moreover, Met-Ed served its responses to the Complainants' latest set of discovery responses on June 17, 2019. Therefore, discovery has been completed for nearly a year.

53. Further, the reasons proffered in their Motion do not constitute “exigent circumstances” that would warrant a continuance under the Prehearing Order. (Prehearing Order, p. 2) (“The hearing in this case will not be rescheduled absent exigent circumstances.”). Although the Complainants time may be divided due to issues experienced by their family

members, their preparation for the hearing should have begun when they filed their Formal Complaint 32 months ago or at least when they received Met-Ed's final set of discovery responses nearly a year ago on June 17, 2019. Moreover, the Complainants' claim that they "do not have access" to their evidence because their "grown children" are going through old household items should be rejected outright. Certainly, the Complainants have their "documentation" in their possession, and the hearing should not be delayed simply because doing so would make it more convenient for the Complainants' children to clean out their house.

54. Therefore, judicial economy demands that this case, which was initiated over 32 months ago, proceed to an evidentiary hearing on June 25, 2020, as currently scheduled..

55. Based on the foregoing, the Complainants' Motion should be denied.

III. CONCLUSION

For the reasons set forth above, Larry R. and Ellen M. Kramer's "Response to Interim Order" should be denied, and this proceeding should continue as scheduled to the June 25, 2020 hearing.

Respectfully submitted,



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Date: June 11, 2020

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Complainants,	:	
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v.	:	Docket No. C-2017-2630621
	:	
Metropolitan Edison Company,	:	
	:	
Respondent.	:	

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 5, 2020 "Response to Interim Order" Filed by Larry R. And Ellen M. Kramer 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:

Larry R. and Ellen M. Kramer
kramer101@comcast.net

Administrative Law Judge Jeffrey A. Watson
Jeffwatson@pa.gov

Dated: June 11, 2020



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