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July 9, 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: Eric Konzelmann v. Metropolitan Edison Company**  
**Docket No. C-2019-3009218**

Dear Secretary Chiavetta:

Enclosed please find a copy of the Objections of Metropolitan Edison Company to the Complainants' late-submitted Exhibits, in the above-referenced matter.

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**

Eric Konzelman,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2019-3009218
	:	
Metropolitan Edison Company,	:	
	:	
Respondent.	:	

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**OBJECTIONS OF  
METROPOLITAN EDISON COMPANY TO  
THE COMPLAINANT’S LATE-SUBMITTED EXHIBITS**

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**TO ADMINISTRATIVE LAW JUDGE EMILY I. DEVOE:**

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 Emily I. Devoe (the “ALJ”), to exclude the late-submitted exhibits of Eric Konzelman (“Complainant”). Met-Ed objects to the Complainant’s late-submitted 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 April 5, 2019, the Complainant filed a Formal Complaint with the Commission against Met-Ed at the above-captioned docket. On April 16, 2019, the Company was electronically served with the Formal Complaint.

2. On May 6, 2019, Met-Ed filed and served an Answer to the Complaint, New Matter and Preliminary Objections.

3. On June 17, 2019, the ALJ issued an Interim Order denying Met-Ed's Preliminary Objections. The ALJ also issued an Interim Order Establishing Litigation Schedule.

4. A telephonic prehearing conference was scheduled for August 13, 2019.

5. Met-Ed served its first set of interrogatories and requests for production of documents on July 12, 2019.

6. On October 15, 2019, Met-Ed filed a status report, confirming that the parties each submitted their respective witness lists, and identifying dates that the parties would be available for a telephonic evidentiary hearing.

7. On November 20, 2019, the Company filed an updated status report, providing updated dates on which the parties would be available for a telephonic evidentiary hearing.

8. On March 10, 2020, the ALJ issued an Interim Order Requiring The Parties To Provide Dates For The Scheduling Of A Telephone Hearing, as the previously identified dates had become stale.

9. On March 19, 2020, Met-Ed filed a status report indicating that the parties were available on several dates in June and July of 2020.

10. On May 6, 2020, the Commission issued a Hearing Notice and the ALJ issued a Prehearing Order which set June 24, 2020, as the date for a telephonic evidentiary hearing in this case.

11. On June 24, 2020, the parties participated in a telephonic evidentiary hearing.

12. At the hearing, the Complainant indicated that he had several exhibits that he wished to admit into the record, but did not have copies available for Met-Ed or the ALJ to

review. As such, the ALJ ordered the Complainant to serve copies of the exhibits he wished to admit to Met-Ed within 10 days. The ALJ further ordered that Met-Ed would have an additional 10 days to file any objections.

13. On June 26, 2020, the Complainant served the following exhibits via e-mail:<sup>1</sup>

- **Complainant Exh. 1** - Orange County Court Case – 7 pages
- **Complainant Exh. 2** - Orange County smart Meter Judgment – 3 pages
- **Complainant Exh. 3** - Court sides with smart meter opponents – 3 pages
- **Complainant Exh. 4** - EMF Safety Network – smart meter health complaints – 84 pages
- **Complainant Exh. 5** - Evidence is Undeniable – 3 pages
- **Complainant Exh. 6** - Fire safety risks – 4 pages
- **Complainant Exh. 7** - Harvard Doctor Research – 3 pages
- **Complainant Exh. 8** - Homeowner testimonies – 3 pages
- **Complainant Exh. 9** - Main PUC Health & Safety case – 3 pages
- **Complainant Exh. 10** - Making the World Stupid – 3 pages
- **Complainant Exh. 11** - Mysterious illnesses - 4 pages
- **Complainant Exh. 12** - Nervous system disruption – 3 pages
- **Complainant Exh. 13** - PUC breaking PA law 1592 – 4 pages
- **Complainant Exh. 14** - Radiation smart meters - 3 pages
- **Complainant Exh. 15** - Smart meters use unsafe cancer causing technology – 3 pages

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<sup>1</sup> The Complainant did not label the exhibits. However, in a subsequent June 29, 2020 e-mail the ALJ numbered each of the Complainant’s exhibits 1 through 15. Met-Ed has maintained the numbering used by the ALJ and added the leading indicator of “Complainant Exh.” to clearly identify the documents for the record.

14. Pursuant to Section 5.401(a) of the Commission's regulations and the ALJ's directive at the evidentiary hearing, Met-Ed objects to all of the Complainant's late-submitted exhibits.

## II. OBJECTIONS

15. As summarized below, each of the Complainant's late-submitted exhibits should be excluded from the record because they are objectionable on several grounds, including hearsay, relevance, authenticity, inherent unreliability.

- **Complainant Exh. 1** - Orange County Court Case – 7 pages

Objections: (1) hearsay; (2) hearsay within hearsay; and (3) relevance – the proposed exhibit is a legal brief filed in another jurisdiction and is irrelevant to whether or not the installation of Met-Ed's smart meter at the Complainant's residence violates Section 1501 of the Public Utility Code.

- **Complainant Exh. 2** - Orange County smart Meter Judgment – 3 pages

Objections: (1) hearsay; and (2) relevance – the proposed exhibit is a court order issued in another jurisdiction and is irrelevant to whether or not the installation of Met-Ed's smart meter at the Complainant's residence violates Section 1501 of the Public Utility Code.

- **Complainant Exh. 3** - Court sides with smart meter opponents – 3 pages

Objections: (1) hearsay; (2) hearsay within hearsay; (3) relevance – the proposed exhibit is a newspaper article regarding a regulatory body's ruling in another jurisdiction and is irrelevant to whether or not the installation of Met-Ed's smart meter at the Complainant's residence violates Section 1501 of the Public Utility Code; and (4) authenticity – the author of the document has not been called as a witness in this proceeding and cannot authenticate the veracity of its contents.

- **Complainant Exh. 4** - EMF Safety Network – smart meter health complaints – 84 pages

Objections: (1) hearsay; (2) hearsay within hearsay; (3) relevance – the proposed exhibit and the statements contained therein are irrelevant to whether or not the installation of Met-Ed's smart meter at the Complainant's residence violates Section 1501 of the Public Utility Code; (4) authenticity – neither the author of the document nor any of the declarants identified (or not) therein have been called as a witness in this proceeding and cannot authenticate the veracity of its document or the statements contained therein; and (5) inherent unreliability – the document was

prepared by anonymous user (i.e., “[mashshare]”), who was not called as a witness in this proceeding, for the website “emfsafetynetwork.org”, which is a known anti-EMF/RF meter advocacy group.

- **Complainant Exh. 5** - Evidence is Undeniable – 3 pages

Objections: (1) hearsay; (2) hearsay within hearsay; (3) relevance – the proposed exhibit and the statements contained therein are irrelevant to whether or not the installation of Met-Ed’s smart meter at the Complainant’s residence violates Section 1501 of the Public Utility Code; (4) authenticity – the document’s author has not been called as a witness in this proceeding to authenticate the accuracy of the statements contained therein; and (5) inherent unreliability – the document was prepared for the website “naturalnews.com”, which is a known anti-EMF/RF meter advocacy group.

- **Complainant Exh. 6** - Fire safety risks – 4 pages

Objections: (1) hearsay; (2) hearsay within hearsay; (3) relevance – the proposed exhibit and the statements contained therein are irrelevant to whether or not the installation of Met-Ed’s smart meter at the Complainant’s residence violates Section 1501 of the Public Utility Code; (4) authenticity – the document’s author has not been called as a witness in this proceeding to authenticate the accuracy of the statements contained therein; and (5) inherent unreliability – the document was prepared for the website “naturalnews.com”, which is a known anti-EMF/RF meter advocacy group.

- **Complainant Exh. 7** - Harvard Doctor Research – 3 pages

Objections: (1) hearsay; (2) hearsay within hearsay; (3) relevance – the proposed exhibit and the statements contained therein are irrelevant to whether or not the installation of Met-Ed’s smart meter at the Complainant’s residence violates Section 1501 of the Public Utility Code; (4) authenticity – the document’s author has not been called as a witness in this proceeding to authenticate the accuracy of the statements contained therein; (5) inherent unreliability – the document was prepared for the website “www.thehealthyhomeeconomist”, which is a known anti-EMF/RF meter advocacy group; and (6) inherent unreliability based on the Commission’s prior rejection of Dr. Carpenter’s (the author of the referenced research) testimony as unreliable in *Myers v. PPL Electric Utilities Corporation*, Docket No. C-2017-2620710 (Order entered Aug. 29, 2019).

- **Complainant Exh. 8** - Homeowner testimonies – 3 pages

Objections: proposed exhibit and the statements contained therein are irrelevant to whether or not the installation of Met-Ed’s smart meter at the Complainant’s residence violates Section 1501 of the Public Utility Code; (4) authenticity – the document’s author has not been called as a witness in this proceeding to authenticate the accuracy of the statements contained therein; and (5) inherent unreliability – the

document was prepared for the website “naturalnews.com”, which is a known anti-EMF/RF meter advocacy group.

- **Complainant Exh. 9** - Main PUC Health & Safety case – 3 pages

Objections: (1) hearsay; (2) hearsay within hearsay; (3) relevance – the proposed exhibit and the statements contained therein are irrelevant to whether or not the installation of Met-Ed’s smart meter at the Complainant’s residence violates Section 1501 of the Public Utility Code; (4) authenticity – the document’s author has not been called as a witness in this proceeding to authenticate the accuracy of the statements contained therein; and (5) inherent unreliability – the final page of the document contains text labeled “Update 6/4/15,” which does not appear to be in the same format and/or font as the remainder of the document and it cannot be determined whether a party other than the document’s author inserted this information.

- **Complainant Exh. 10** - Making the World Stupid – 3 pages

Objections: (1) hearsay; (2) hearsay within hearsay; (3) relevance – the proposed exhibit and the statements contained therein are irrelevant to whether or not the installation of Met-Ed’s smart meter at the Complainant’s residence violates Section 1501 of the Public Utility Code; (4) authenticity – the document’s author has not been called as a witness in this proceeding to authenticate the accuracy of the statements contained therein; and (5) inherent unreliability – the document was prepared for the website “naturalnews.com”, which is a known anti-EMF/RF meter advocacy group.

- **Complainant Exh. 11** - Mysterious illnesses - 4 pages

Objections: (1) hearsay; (2) hearsay within hearsay; (3) relevance – the proposed exhibit and the statements contained therein are irrelevant to whether or not the installation of Met-Ed’s smart meter at the Complainant’s residence violates Section 1501 of the Public Utility Code; (4) authenticity – the document’s author has not been called as a witness in this proceeding to authenticate the accuracy of the statements contained therein; and (5) inherent unreliability – the document was prepared for the website “naturalnews.com”, which is a known anti-EMF/RF meter advocacy group.

- **Complainant Exh. 12** - Nervous system disruption – 3 pages

Objections: (1) hearsay; (2) hearsay within hearsay; (3) relevance – the proposed exhibit and the statements contained therein are irrelevant to whether or not the installation of Met-Ed’s smart meter at the Complainant’s residence violates Section 1501 of the Public Utility Code; (4) authenticity – the document’s author has not been called as a witness in this proceeding to authenticate the accuracy of the statements contained therein; and (5) inherent unreliability – the document was

prepared for the website “naturalnews.com”, which is a known anti-EMF/RF meter advocacy group.

- **Complainant Exh. 13** - PUC breaking PA law 1592 – 4 pages

Objections: (1) hearsay; (2) hearsay within hearsay; (3) relevance – the proposed exhibit and the statements contained therein are irrelevant to whether or not the installation of Met-Ed’s smart meter at the Complainant’s residence violates Section 1501 of the Public Utility Code; (4) authenticity – the document’s author has not been called as a witness in this proceeding to authenticate the accuracy of the statements contained therein; and (5) inherent unreliability – the document was prepared by Catherine Frompovich, who is a known anti-EMF/RF advocate, for the website “naturalnews.com”, which is a known anti-EMF/RF meter advocacy group.

- **Complainant Exh. 14** - Radiation smart meters - 3 pages

Objections: (1) hearsay; (2) hearsay within hearsay; (3) relevance – the proposed exhibit and the statements contained therein are irrelevant to whether or not the installation of Met-Ed’s smart meter at the Complainant’s residence violates Section 1501 of the Public Utility Code; (4) authenticity – the document’s author has not been called as a witness in this proceeding to authenticate the accuracy of the statements contained therein; and (5) inherent unreliability – the document was prepared for the website “naturalnews.com”, which is a known anti-EMF/RF meter advocacy group.

- **Complainant Exh. 15** - Smart meters use unsafe cancer causing technology – 3 pages

Objections: (1) hearsay; (2) hearsay within hearsay; (3) relevance – the proposed exhibit and the statements contained therein are irrelevant to whether or not the installation of Met-Ed’s smart meter at the Complainant’s residence violates Section 1501 of the Public Utility Code; (4) authenticity – the document’s author has not been called as a witness in this proceeding to authenticate the accuracy of the statements contained therein; and (5) inherent unreliability – the document was prepared for the website “naturalnews.com”, which is a known anti-EMF/RF meter advocacy group.

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

16. 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>2</sup>

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<sup>2</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,

and not subject to a hearsay exception.

17. 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.

18. 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 or the quoted declarants, 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.

19. 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.

20. 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.*

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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;
- (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).

*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 (Pa. Super. 1992); Pa.R.E. 703.<sup>3</sup> Here, however, the Complainant did not offer any expert witness testimony.

21. 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.

22. 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>3</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.").

**B. THE COMPLAINANT’S EXHIBITS SHOULD BE EXCLUDED OR DENIED WEIGHT BECAUSE THEY ARE IRRELEVANT, LACK AUTHENTICITY, AND INHERENTLY UNRELIABLE**

23. As noted above, many of Complainant’s proposed exhibits also are inadmissible due to other significant flaws, including relevance,<sup>4</sup> authenticity,<sup>5</sup> and inherent unreliability.<sup>6</sup>

24. 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 largely do not address issues relevant to the installation of AMI meters in Pennsylvania.

25. 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 or from authors who have not been called as a witness in this proceeding. 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. Moreover, Met-Ed has not been provided the opportunity to cross examine the authors of these documents.

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<sup>4</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>5</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>6</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).

26. For these reasons, the Complainant's late-submitted exhibits identified above should not be relied upon when reaching a determination because they are irrelevant, lack authenticity, and are inherently unreliable.

### **III. CONCLUSION**

WHEREFORE, Metropolitan Edison Company respectfully requests that Administrative Law Judge Emily I. Devoe sustain its Objections and refrain from relying upon the late-submitted exhibits served by the Complainant when reaching a determination in this proceeding, as explained above.

Respectfully submitted,



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Counsel for Metropolitan Edison Company

Dated: July 9, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eric Konzelman,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2019-3009218
	:	
Metropolitan Edison Company,	:	
	:	
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' late-submitted 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:

Eric Konzelmann  
[ekonzelmann@hotmail.com](mailto:ekonzelmann@hotmail.com)

Administrative Law Judge Emily I. DeVoe  
[edevoe@pa.gov](mailto:edevoe@pa.gov)

Dated: July 9, 2020

  
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