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July 10, 2020

VIA ELECTRONIC FILING

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

Re: Deborah Engisch-Platt and Kim Platt v. Metropolitan Edison Company
Docket No. C-2019-3013745

Dear Secretary Chiavetta:

Enclosed please find the Answer of Metropolitan Edison Company to the Motion to Stay with regard to the above-captioned matter.

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**

Deborah Engisch-Platt and Kim Platt	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2019-3013745
	:	
Metropolitan Edison Company	:	
	:	
Respondent.	:	

**ANSWER OF METROPOLITAN EDISON COMPANY TO THE
MOTION TO STAY FILED BY
DEBORAH ENGISCH-PLATT AND KIM PLATT**

TO DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

Pursuant to 52 Pa. Code § 5.61, Metropolitan Edison Company (“Met-Ed” or the “Company”) hereby files this Answer to the “Motion to Stay Hearings and All Proceedings” (“Motion to Stay” or “Motion”), which was filed by Deborah Engisch-Platt and Kim Platt (“Complainants”) on or about March 16, 2020, with the Pennsylvania Public Utility Commission (“Commission”) in the above-captioned proceeding. In the Motion to Stay, the Complainants request that the hearing and all proceedings be stayed until their witness, William Bathgate, ends “his self-quarantine” from the coronavirus (“COVID-19”). As alleged support, the Complainants contend that a stay of the hearing and proceedings is justified because Mr. Bathgate “was scheduled to meet with the [Complainants] at their home to measure the radiation and conductive emissions from their neighbors[’] Smart Meters.” (Motion, p. 1.)

The Complainants’ Motion should be denied. The Complainants had more than sufficient time to prepare their direct case and serve their written direct testimony by the agreed-upon April 1, 2020 deadline. Yet, the Complainants completely failed to serve any written direct

testimony, let alone the testimony of Mr. Bathgate. The Complainants also never explain what prevented Mr. Bathgate from completing his measurements prior to the COVID-19 situation or why the lack of those measurements prohibited him from presenting any testimony at all. In fact, Mr. Bathgate has previously testified in another smart meter complaint proceeding without conducting such measurements.¹

Moreover, the Complainants' request for a stay is entirely conditioned on when Mr. Bathgate "feels" that he is out of danger from being exposed to COVID-19. Effectively, the proceeding would be stayed indefinitely until such time as Mr. Bathgate feels that he is safe. Such a stay is completely unreasonable, especially in a proceeding that is being conducted through written testimony and, if needed, a telephonic hearing, which would not place Mr. Bathgate or any of the participants at any increased risk of exposure.

Finally, the Complainants' request for a stay should be denied as moot. Met-Ed is filing a Motion for Summary Judgment, which requests that the Formal Complaint be dismissed due to the Complainants' failure to serve any written direct testimony. Thus, even assuming *arguendo* that the Complainants' reasons for delaying Mr. Bathgate's direct testimony were accepted, nothing justifies the Complainants' complete failure to serve any written direct testimony by April 1, 2020, as required by Deputy Chief Administrative Law Judge Joel H. Cheskis (the "ALJ"). Therefore, as explained in Met-Ed's Motion for Summary Judgment, the Formal Complaint should be dismissed in its entirety and with prejudice.

¹ See *Schmukler v. PPL Electric Utilities Corp.*, Docket No. C-2017-2621285 (Order entered July 23, 2019) ("*Schmukler*"), *appeal pending*, *Schmukler v. Pa. PUC*, Docket No. 1102 C.D. 2019.

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

I. INTRODUCTION

1. Almost 9 months ago, on October 23, 2019, Met-Ed was served with the Formal Complaint filed by the Complainants, which challenged the Company's planned installation of a smart meter at the Complainants' property.

2. On November 12, 2019, Met-Ed filed an Answer, New Matter, and Preliminary Objections to the Complaint.

3. On December 5, 2019, the Complainants filed an Answer to Met-Ed's New Matter.

4. On December 16, 2019, the Complainants filed an Answer to Met-Ed's Preliminary Objections.

5. On December 24, 2019, a Notice was issued assigning the ALJ to rule on Met-Ed's Preliminary Objections.

6. On January 8, 2020, the ALJ issued an Order denying Met-Ed's Preliminary Objections.

7. Also on January 8, 2020, a Notice was issued scheduling a telephonic evidentiary hearing before the ALJ on February 14, 2020.

8. On January 10, 2020, a Prehearing Order was issued, which set forth certain procedural rules and requirements for the proceeding.

9. On January 21, 2020, the Complainants filed a request to have the entire hearing conducted through written testimony.

10. On February 3, 2020, the ALJ emailed the parties explaining that he had received the Complainants' request for the entire hearing to be conducted through written testimony and proposing a schedule for the exchange of written testimony. Under that proposed schedule, the

Complainants' direct testimony would be due by April 1, 2020, Met-Ed's rebuttal testimony would be due by June 1, 2020, and the Complainants' surrebuttal testimony would be due by August 3, 2020.

11. Later on February 3, 2020, Met-Ed responded to the ALJ's email and stated that it did not object to the ALJ's proposal, with the caveat that if any experts submitted written testimony on behalf of the Complainants, the Company would like a brief hearing to be held so that Met-Ed could cross-examine those experts.

12. On February 6, 2020, the Complainants emailed the ALJ and Met-Ed that they were agreeable to the proposal.

13. Also on February 6, 2020, the Company served copies of the hearing exhibits it intended to use at the February 14, 2020 hearing.

14. On February 7, 2020, the ALJ responded to the Complainants' February 6, 2020 email, informing the parties that he would cancel the hearing and issue a scheduling order adopting this scheduling proposal. The ALJ also reiterated that the Complainants' direct testimony would be due by April 1, 2020.

15. On or about March 16, 2020, the Complainants filed a Motion to stay the hearing and all proceedings.

16. The Complainants never served any direct testimony.

17. On or about March 31, 2020, the Complainants submitted a "Brief of Complainant," which was received by Met-Ed on April 14, 2020.

18. On June 1, 2020, Met-Ed filed a letter explaining that the Company was not serving rebuttal testimony, due to the Complainants' failure to serve any direct testimony.

19. Met-Ed herein submits this Answer in opposition to the Complainants' Motion to Stay.

II. ANSWER TO THE COMPLAINANTS' MOTION TO STAY

20. In the Motion to Stay, the Complainants request that the hearing and all proceedings be stayed until their witness, William Bathgate, ends "his self-quarantine" from COVID-19. As alleged support, the Complainants contend that a stay of the hearing and proceedings is justified because Mr. Bathgate "was scheduled to meet with the [Complainants] at their home to measure the radiation and conductive emissions from their neighbors['] Smart Meters." (Motion, p. 1.)

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

22. This proceeding began several months ago on October 23, 2019, when Met-Ed was served with the Formal Complaint filed by the Complainants. In early February 2020, both parties agreed to conduct this proceeding via written testimony only, except that a brief hearing would be held for the Company to cross-examine any experts who submitted testimony on behalf of the Complainants. Under the agreed-upon schedule, the Complainants' direct testimony would be due by April 1, 2020, Met-Ed's rebuttal testimony would be due by June 1, 2020, and the Complainants' surrebuttal testimony would be due by August 3, 2020.

23. From the beginning of this proceeding in October 2019 until the due date for the Complainants' direct testimony on April 1, 2020, the Complainants had several months to prepare their direct case. Yet, the Complainants entirely failed to serve written direct testimony for any witnesses to date. The Complainants cannot cure their failure to timely prepare and submit written testimony for any of their witnesses, let alone Mr. Bathgate, by requesting this unjustified stay of the agreed-upon schedule.

24. The Complainants also never explain what prevented Mr. Bathgate from completing his measurements prior to the COVID-19 situation or why the lack of those measurements prohibited from presenting any testimony at all. In fact, Mr. Bathgate testified in another smart meter complaint proceeding without conducting such measurements.² Notably, the Commission held in that proceeding that “Mr. Bathgate’s testimony proved unreliable” on the basic issue of “whether RF fields are ionizing/non-ionizing” and gave more weight to the utility’s expert as a result.³ Therefore, even if Mr. Bathgate were to offer any testimony in this proceeding, it would severely lack credibility. Thus, no reason exists to delay this proceeding simply to provide Mr. Bathgate with an opportunity to conduct these “measurements.”

25. In addition, the Complainants’ request for a stay is unreasonable because it is entirely conditioned on when “Mr. Bathgate feels he is out of danger, to exposure from the virus.” (Motion, p. 1.) Such a stay would be completely dependent on Mr. Bathgate’s feelings and could serve to delay the hearing indefinitely so long as Mr. Bathgate feels that he may be exposed to COVID-19.

26. Further, the Complainants erroneously claim that one of the Company’s attorneys was granting a stay because of “his fear of contracting Corona Virus.” Ward Smith is an attorney representing PECO Energy Company, not Met-Ed, before the Commonwealth Court. Moreover, the Commonwealth Court proceeding the Complainants appear to reference (*i.e.*, *Povac, et al. v. Pa. PUC*, Docket Nos. 492 C.D. 2019, *et al.*) is no longer stayed and, in fact, had a telephonic oral argument held before the Court on June 10, 2020. Therefore, the temporary stay in that case does not justify the indefinite and unreasonable stay requested by the Complainants.

² See *Schmukler v. PPL Electric Utilities Corp.*, Docket No. C-2017-2621285 (Order entered July 23, 2019).

³ *Id.*, p. 46.

27. Finally, the Complainants' request for a stay should be rendered moot. Concurrent with this Answer, Met-Ed is filing a Motion for Summary Judgment, which requests that the Formal Complaint be dismissed due to the Complainants' failure to serve any written direct testimony, let alone by the April 1, 2020 deadline. Again, even if the Complainants' reasons for delaying Mr. Bathgate's direct testimony were accepted, nothing justifies the Complainants' complete failure to serve any written direct testimony by April 1, 2020, as required by the ALJ. Thus, as explained in Met-Ed's Motion for Summary Judgment, the Formal Complaint should be dismissed in its entirety and with prejudice, thereby rendering their Motion to Stay moot.

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

III. CONCLUSION

For the reasons set forth above, Deborah Engisch-Platt and Kim Platt's Motion to Stay should be denied.

Respectfully submitted,



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Date: July 10, 2020

Attorneys for Metropolitan Edison Company

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CERTIFICATE OF SERVICE


I hereby certify that I have this day served a true copy of the aforementioned documents 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:

Deborah Engisch-Platt and Kim Platt
riversong3@comcast.net

Administrative Law Judge Joel H. Cheskis
jcheskis@pa.gov

Dated: July 10, 2020



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