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July 14, 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: Heidi Fiedler v. Metropolitan Edison Company**  
**Docket No. C-2018-3003642**

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**

Heidi Fiedler,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3003642
	:	
Metropolitan Edison Company,	:	
	:	
Respondent.	:	

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**ANSWER OF METROPOLITAN EDISON COMPANY TO THE  
MOTION TO STAY FILED BY  
HEIDI FIEDLER ON JUNE 30, 2020**

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**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 “letter requesting abeyance” (“Motion to Stay” or “Motion”), which was filed by Heidi Fiedler (“Complainant”) on June 30, 2020, in the above-captioned proceeding.

In the Motion to Stay, the Complainant requests that the proceeding be stayed until after the Commonwealth Court issues its Order in *Povacz, et al. v. Pa. PUC*.<sup>1</sup> She also requests a continuance of the July 30, 2020 hearing because: (1) the Commission has not issued an Order on her “Appeal of Interim Order” filed on February 13, 2020 (“Petition for Interlocutory Review”), which sought interlocutory review of Administrative Law Judge F. Joseph Brady’s (“ALJ Brady”) Interim Order Rejecting Complainant’s Third Amended Complaint and

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<sup>1</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.

Dismissing her Motion for Discovery and Revised Litigation Schedule; and (2) two of her witnesses have a conflict with the July 30, 2020 hearing date.

As explained herein, Met-Ed opposes the Complainant's request to stay this proceeding until after the Commonwealth Court issues its decision in *Povacz*. No reason exists to postpone the hearings in this case due to the *Povacz* appeal pending before the Commonwealth Court. This case has been in litigation for nearly two years and must finally proceed to hearings. Moreover, nothing guarantees that the Court's decision in *Povacz* will be issued before the Commission issues its Final Order in this case or that the *Povacz* decision will be controlling of some or all of the issues in this case. Therefore, judicial economy demands that this case proceed toward evidentiary hearings and the development of a factual record.

Furthermore, the Commission already has denied the Complainant's Petition for Interlocutory Review that was filed on February 13, 2020. In that Petition, the Complainant sought interlocutory review of the Interim Order Rejecting Complainant's Third Amended Complaint and Dismissing her Motion for Discovery and Revised Litigation Schedule. However, petitions for interlocutory review are deemed denied if the Commission does not grant them within 30 days of filing. *See* 52 Pa. Code § 5.303(b). Here, the Commission did not grant the Petition within the 30-day period, so it is deemed to be denied. Therefore, no reason exists to stay the proceeding until the Commission issues an Order on the Petition for Interlocutory Review because no such Order is forthcoming.

Notwithstanding, Met-Ed recognizes that two of the Complainant's witnesses are unavailable for the July 30, 2020 hearing. Moreover, both parties are planning to present several witnesses to testify on their behalf, which is expected to require more than one day of hearings if all of the direct testimony and exhibits are to be provided through oral testimony. Thus, Met-Ed

believes that it would be prudent to set a schedule for the exchange of written testimony and exhibits and to hold a telephonic hearing on a mutually-agreeable date for the admission of the written testimony and exhibits and for parties to cross-examine each other's witnesses.

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

**I. INTRODUCTION**

1. Nearly two years ago, on July 26, 2018, Met-Ed was originally served with the Complainant's Formal Complaint.

2. On August 13, 2018, Met-Ed filed an Answer and New Matter to the Complaint as well as Preliminary Objections to the Complaint.

3. On September 11, 2018, a Notice was issued assigning Administrative Law Judge Jeffrey A. Watson ("ALJ Watson") to rule on Met-Ed's Preliminary Objections.

4. On September 21, 2018, an Interim Order was issued denying the Company's Preliminary Objections. Also, an Interim Order was issued that established the initial litigation schedule for the proceeding.

5. On November 7, 2018, Met-Ed was served with a copy of the Complainant's Amended Formal Complaint.

6. On November 13, 2018, Met-Ed filed a Motion to Compel.

7. On November 28, 2018, Met-Ed filed an Answer and New Matter to the Complainant's Amended Formal Complaint.

8. On November 27, 2018, the Complainant filed an Answer to Met-Ed's Motion to Compel.

9. On January 7, 2019, ALJ Watson issued an Interim Order granting Met-Ed's Motion to Compel.

10. On February 1, 2019, the Complainant filed a Petition to extend the deadline for discovery by six months.

11. On February 13, 2019, Met-Ed filed a Motion to Dismiss the Complaint.

12. On February 14, 2019, ALJ Watson issued an Interim Order denying the Complainant's Petition to extend the deadline for discovery.

13. On February 25, 2019, the Complainant filed an Answer to Met-Ed's Motion to Dismiss.

14. On February 28, 2019, Met-Ed filed a status report, in accordance with the established litigation schedule. The Complainant did not file a status report by February 28, 2019.

15. On March 1, 2019, ALJ Watson issued an Interim Order rescheduling the prehearing conference.

16. On March 5, 2019, a Notice was issued scheduling a telephonic prehearing conference for April 19, 2019.

17. On March 7, 2019, Met-Ed was served with the Complainant's Second Amended Formal Complaint.

18. On March 13, 2019, ALJ Watson issued an Interim Order rescheduling the prehearing conference for March 26, 2019. A Notice also was issued rescheduling the prehearing conference for March 26, 2019.

19. On March 18, 2019, the Complainant filed her status report, which was due by February 28, 2019.

20. Also on March 18, 2019, the Complainant filed a "Request for Cancellation of Prehearing Conference and Request for Amended Litigation Schedule."

21. On March 25, 2019, ALJ Watson issued an Interim Order denying the Complainant's "Request for Cancellation of Prehearing Conference and Request for Amended Litigation Schedule."

22. On March 27, 2019, Met-Ed filed an Answer and New Matter as well as Preliminary Objections to the Second Amended Formal Complaint.

23. On April 1, 2019, a Notice was issued rescheduling the prehearing conference for April 19, 2019.

24. On April 9, 2019, the Complainant filed a Motion to Dismiss Met-Ed's Preliminary Objections to the Second Amended Formal Complaint.

25. On April 22, 2019, the Complainant filed a Motion to Dismiss Met-Ed's Answer and New Matter to the Second Amended Formal Complaint.

26. On April 24, 2019, a Notice was issued scheduling a further prehearing conference to be held on May 2, 2019.

27. On October 10, 2019, ALJ Watson issued an Interim Order: (1) granting Met-Ed's Preliminary Objections to the Second Amended Formal Complaint; (2) denying the Complainant's April 9, 2019 Motion to Dismiss; and (3) denying the Complainant's April 22, 2019 Motion to Dismiss. ALJ Watson also issued an Interim Order revising the litigation schedule and an Interim Order disposing of the outstanding discovery issues and holding Met-Ed's Motion to Dismiss in abeyance.

28. On November 1, 2019, the Complainant filed a status report.

29. On November 13, 2019, Met-Ed filed a status report.

30. On November 20, 2019, Met-Ed filed another status report.

31. On November 22, 2019, a Notice was issued assigning ALJ Brady to this proceeding.

32. On November 25, 2019, the Complainant filed a Motion to Compel.

33. On December 3, 2019, Met-Ed filed an Answer to the Complainant's Motion to Compel.

34. On December 4, 2019, Met-Ed filed an Amended Answer to the Complainant's Motion to Compel.

35. On December 5, 2019, a Notice was issued scheduling an in-person evidentiary hearing for February 5, 2020.

36. On December 11, 2019, ALJ Brady issued an Interim Order denying the Complainant's Motion to Compel.

37. On December 19, 2019, ALJ Brady issued a Second Prehearing Order, which set forth some general procedural rules for the proceeding and the evidentiary hearing.

38. On January 21, 2020, the Complainant filed a Motion for Continuance and Change of Location, in which she requested that the hearing be rescheduled for a new date and that the in-person hearing be held in Harrisburg instead of Philadelphia.

39. On January 27, 2020, a Notice was issued converting the February 5, 2020 in-person hearing into a telephonic prehearing conference.

40. On February 3, 2020, the Complainant filed a Third Amended Formal Complaint and a Motion for Discovery and Revised Litigation Schedule

41. Later on February 3, 2020, ALJ Brady issued an Interim Order rejecting the Complainant's Third Amended Formal Complaint and her Motion for Discovery and Revised Litigation Schedule.

42. On February 5, 2020, a Notice was issued assigning the case to Deputy Chief Administrative Law Judge Joel H. Cheskis (the “ALJ”) and scheduling an in-person evidentiary hearing in Harrisburg on April 28, 2020.

43. On February 7, 2020, Met-Ed filed a letter stating that it would not be filing a response to the Third Amended Formal Complaint setting forth certain procedural rules for the proceeding and the evidentiary hearing.

44. On February 11, 2020, the ALJ issued a Prehearing Order.

45. On February 13, 2020, the Complainant filed her Petition for Interlocutory Review, which sought to challenge ALJ Brady’s February 3, 2020 Interim Order rejecting her Third Amended Formal Complaint and her Motion for Discovery and Revised Litigation Schedule.

46. On February 26, 2020, Met-Ed filed a Brief in Opposition to the Complainant’s Petition for Interlocutory Review.

47. On May 12, 2020, a Notice was issued changing the April 28, 2020 in-person evidentiary hearing into a telephonic evidentiary hearing to be held on July 30, 2020.

48. On June 30, 2020, the Complainant filed her Motion to Stay.

49. Met-Ed herein submits this Answer in opposition to the Complainant’s Motion to Stay.

## **II. ANSWER TO THE COMPLAINANT’S MOTION TO STAY**

50. In the Motion to Stay, the Complainant requests that the proceeding be stayed until after the Commonwealth Court issues its Order in *Povacz, et al. v. Pa. PUC*. (Motion to Stay, p. 1.) She also requests a continuance of the July 30, 2020 hearing because: (1) the Commission has not issued an Order on her Petition for Interlocutory Review, which was filed

on February 13, 2020; and (2) two of her witnesses have a conflict with the July 30, 2020 hearing date. (Motion to Stay, p. 1.)

51. The Complainant's Motion to Stay, as currently presented, should be denied.

52. First, there is no reason to stay this proceeding until after the Commonwealth Court issues its decision in *Povacz*.

53. This case was initiated nearly two years ago on July 26, 2018. Since that time, the Complainant has made several efforts to delay this proceeding, the most recent of which is her pending Motion to Stay. This case must finally proceed toward evidentiary hearings without further unnecessary delays. Indeed, discovery concluded on February 1, 2019, and Met-Ed has been ready to present its case for several months. Moreover, nothing guarantees that the Court's decision in *Povacz* will be issued before the Commission rules on the instant Complaint or that it will be controlling of some or all of the issues in this case. Thus, judicial economy demands that this case proceed toward evidentiary hearings and the development of a factual record.

54. Second, the Commission already has denied the Complainant's Petition for Interlocutory Review, which was filed on February 13, 2020.

55. Petitions for interlocutory review are deemed denied if the Commission does not grant them within 30 days of filing. *See* 52 Pa. Code § 5.303(b).

56. Here, the Commission did not grant the Petition within the 30-day period (*i.e.*, by March 4, 2020). In fact, the Commission, as the Complainant concedes, never issued an Order on her Petition for Interlocutory Review. Therefore, per Section 5.303(b) of the Commission's regulations, the Petition for Interlocutory Review is deemed to be denied. *See id.* Thus, no reason exists to stay the proceeding until the Commission issues an Order on the Petition for Interlocutory Review because no such Order is forthcoming.

57. Notwithstanding, Met-Ed recognizes that two of the Complainant's witnesses are unavailable for the July 30, 2020 hearing. Moreover, both parties are planning to present several witnesses to testify on their behalf, which is expected to require more than one day of hearings if all of the direct testimony and exhibits are to be provided through oral testimony.<sup>2</sup> Furthermore, due to the coronavirus outbreak ("COVID-19"), telephonic hearings are being held in favor of in-person hearings to help reduce the risk of exposure, while still enabling Commission proceedings to be timely adjudicated.

58. Therefore, Met-Ed believes that the ALJ should establish a schedule for the exchange of written testimony and exhibits and hold a telephonic hearing on a mutually-agreeable date for the admission of the written testimony and exhibits and for parties to cross-examine each other's witnesses.

59. Met-Ed also submits that each witness's written testimony should be limited to 30 pages in length.<sup>3</sup> This reasonable page-length limitation will reduce the burdens on each party's witnesses to prepare their written testimony, while producing a clearer, more concise record for the ALJ's review.

60. In sum, these proposed changes to the procedural schedule would help simplify the issues, conserve the parties' and the Commission's resources, develop a clear record on the complex issues surrounding Met-Ed's smart meters, and expedite the Commission's adjudication of the Complaint.

61. Based on the foregoing, Met-Ed respectfully submits that the Complainant's Motion to Stay, as currently presented, should be denied and that the ALJ should establish a

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<sup>2</sup> Specifically, Met-Ed provided notice on December 6, 2019, that it would be presenting the testimony of six witnesses; on November 6, 2019, Ms. Fiedler provided notice that she would be presenting the testimony of at least three witnesses.

<sup>3</sup> Exhibits attached to the written testimony would not count against the page limitation.

schedule for the exchange of written testimony and exhibits and hold a telephonic hearing on a mutually-agreeable date for the admission of the written testimony and exhibits and for parties to cross-examine each other's witnesses.

### **III. CONCLUSION**

For the reasons set forth above, Heidi Fiedler's Motion to Stay should be denied, and Deputy Chief Administrative Law Judge Joel H. Cheskis should establish a schedule for the exchange of written testimony and exhibits and hold a telephonic hearing on a mutually-agreeable date for the admission of the written testimony and exhibits and for parties to cross-examine each other's witnesses.

Respectfully submitted,



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Date: July 14, 2020

Attorneys for Metropolitan Edison Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Heidi Fiedler,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3003642
	:	
Metropolitan Edison Company,	:	
	:	
Respondent.	:	

**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 First Class mail, postage prepaid, as follows:

Heidi Fiedler  
432 East Wesner Road  
Blandon, PA 19510

Service by electronic mail, as follows:

Administrative Law Judge Joel Cheskis  
jcheskis@pa.gov

Dated: July 14, 2020

  
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