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July 31, 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: Larry R. and Ellen M. Kramer v. Metropolitan Edison Company**  
**Docket No. C-2017-2630621**

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**

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

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**OBJECTIONS OF  
METROPOLITAN EDISON COMPANY  
TO THE COMPLAINANTS' LATE-SUBMITTED EXHIBITS**

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**TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:**

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 Jeffrey A. Watson (the “ALJ”), to exclude any further late-submitted exhibits of Larry R. and Ellen M. Kramer (“Complainants”). At the evidentiary hearing held in this matter, the Complainants were provided additional time to serve any exhibits they wished to present in this proceeding; the deadline for such submission(s) was July 20, 2020. The Complainants failed to meet this deadline and served two additional exhibits on July 24, 2020. They further suggested in the correspondence serving these exhibits that the “are to have our other exhibits submitted by 8/14.” See **Attachment A**.<sup>1</sup> The ALJ should deny Complainants’ request to have these two exhibits

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<sup>1</sup> Attachment A is a true and correct copy of an e-mail from Ms. Kramer to counsel for Met-Ed and Your Honor dated July 24, 2020, which served as attachments the two termination letters the Complainants identified as exhibits they desired to submit at the hearing.

admitted as untimely and further deny any further untimely submission of exhibits.<sup>2</sup>

In support thereof, 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.

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<sup>2</sup> At this time, Met-Ed objects to the admission of any further exhibits by the Complainants as untimely. However, as Met-Ed does not know the subject matter of any such exhibits at this time, Met-Ed fully reserves its rights to renew its objection based on untimeliness and raise additional objections to any further exhibits based on their substance.

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.<sup>3</sup>

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.

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<sup>3</sup> 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 June 5, 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.

42. Met-Ed filed an Answer to the Complainants' response on June 11, 2020.

43. The ALJ issued an Interim Order Denying Motion Filed By Complainants on June 5, 2020, on June 16, 2020 ("June 16 Interim Order"). Therein, the ALJ, among other things,

excused the parties from providing written copies of their proposed exhibits on or before June 15, 2020. However, the ALJ ordered:

if any party intends to present any documents or exhibits for my consideration at the hearing, or if any party intends to have a witness refer to or rely upon any material of any kind, document or proposed exhibit, you must serve me with one copy of each proposed exhibit and any document or material that you intend to have a witness refer to or rely upon, by email directed to **Dan Pallas, Legal Assistant** at [dpallas@pa.gov](mailto:dpallas@pa.gov), with a copy of the email transmission and attachments copied by email to every other party. The email transmission must be received at least five (5) business days before the hearing.

June 16 Interim Order, Ordering Paragraph 5 (emphasis in original).

44. The Complainants filed a Second Motion on June 23, 2020.

45. Met-Ed objected to the Second Motion via e-mail on June 24, 2020, and the Complainants replied in support of the Second Motion via e-mail that same day.

46. The ALJ issued an Interim Order Denying Second Motion In The Case Of Docket No. C-2017-2630621 Filed By Complainants On June 23, 2020, on June 26, 2020 (“June 26 Interim Order”). Therein, the ALJ again reiterated that any exhibits were required to be sent to the ALJ, his assistant and the parties “at least five (5) business days before the hearing.” June 26 Interim Order, at p. 4.

47. An evidentiary hearing was held in this matter on June 29, 2020. At the hearing, the Complainants, sought additional time to submit two letters as exhibits and were granted until July 20, 2020, to do so; the Company was granted until July 31, 2020, to respond. Tr. 122-123, 286.

## **II. OBJECTIONS TO THE COMPLAINANTS' LATE-FILED EXHIBITS**

48. The two letters submitted by the Complainants as exhibits on July 24, 2020, are untimely and should be excluded from the record. For purposes of clarity, Met-Ed will refer to the termination letter dated August 29, 2017 as “Compl. Exhibit 1” and the termination letter dated September 13, 2017, as “Compl. Exhibit 2.”

49. At the hearing, the ALJ specifically ruled upon the procedure for the Complainants to properly submit two letters, which they identified as proposed exhibits. The ALJ ordered:

With regard to what was identified by the complainants as two letters from the respondent to the complainants in approximately August of 2017 to October of 2017 regarding refusal to permit a smart meter at the service location and possible discontinuance of electric service.

I have indicated complainant will have until July 20th to submit those as late-filed exhibits. The company will have until July 31st to file any objection to those late-filed exhibits, and then I will make a ruling on that.

Tr. 386

50. Despite the ALJ’s directive to submit these exhibits on or before July 20, 2020, the Complainants served these exhibits on July 24, 2020.

51. Importantly, as described in the procedural history set forth in these Objections, the Complainants have repeatedly received extensions of time to identify, designate and submit evidence (i.e., witnesses or exhibits) in this proceeding. However, the Complainants did not serve any exhibits upon Met-Ed or the ALJ in advance of the hearing.

52. The Complainants’ failure to submit the late-filed Compl. Exhibit 1 and Compl. Exhibit 2 in accordance with the ALJ’s July 20, 2020 deadline constitutes the latest act in a long-

standing pattern of delay by the Complainants. As such, the Complainants missed the deadline to submit these late-filed exhibits, and the exhibits should be excluded on those grounds alone.

53. Met-Ed further notes that the Complainants suggested in their e-mail serving the late-filed Compl. Exhibits 1 and 2 that “are to have our other exhibits submitted by 8/14.” *See Attachment A*. However, the Complainants were not granted an extension to serve any other late-filed exhibits; only the two termination letters they identified during the course of their testimony. Tr. 386. Although the ALJ provided the Complainants the opportunity to present further late-filed exhibits, based on the specific facts surrounding any such exhibits, the Complainants simply failed to specifically identify and describe any other exhibits they would be permitted to file late.

54. Indeed, despite being directed by the ALJ to identify any further exhibits the Complainant clearly stated “I can’t do that.” Tr. 119. Moreover, despite indicating that any additional exhibits were in a “binder,” which the Complainants had within their possession, and being provided an opportunity to retrieve those documents and identify them for consideration, the Complainants failed to identify or produce any additional items they wished to be considered as late-filed exhibits. *See* Tr. 119-121, 124-132. As such, the Complainants were only granted until July 20, 2020 to submit the two termination letters identified herein as Compl. Exhibits 1 and 2; they were not at any time provided until August 14, 2020 to submit any other late-filed exhibits.

55. For these reason, Met-Ed requests that the Complainants be prohibited from submitting any further late-filed exhibits in this proceeding. To the extent that this request is denied, or the Complainants refuse to comply with an order prohibiting the submission of additional late-filed exhibits, Met-Ed hereby provides notice of its intent to seek sanctions, up to

and including dismissal of the Complaint, due to the Complainants' repeated refusals and failures to comply with the orders and directives of the ALJ and the Commission's regulations.

### **III. CONCLUSION**

For the reasons set forth above, Larry R. and Ellen M. Kramer's late-submitted exhibits should be excluded from the record in this proceeding, and the Complainants should be prohibited from untimely submitting further proposed exhibits in this proceeding.

Respectfully submitted,



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Date: July 31, 2020

Attorneys for Metropolitan Edison Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Larry R. and Ellen M. Kramer,	:	
	:	
Complainants,	:	
	:	
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 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, as follows:

Larry R. and Ellen M. Kramer  
[kramer101@comcast.net](mailto:kramer101@comcast.net)

Administrative Law Judge Jeffrey A. Watson  
[Jeffwatson@pa.gov](mailto:Jeffwatson@pa.gov)

Dated: July 31, 2020

  
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