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August 31, 2020

VIA ELETRONIC 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 No. C-2017-2630621

Dear Secretary Chiavetta:

Enclosed please find a copy of the Answer of Metropolitan Edison Company to the Complainants' Objections to Public Documents, 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.	:	

**ANSWER OF
METROPOLITAN EDISON COMPANY
TO THE COMPLAINANTS' OBJECTIONS TO PUBLIC DOCUMENTS**

TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:

Metropolitan Edison Company (“Met-Ed” or the “Company”) hereby files this Answer 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 the post-hearing Objections of Larry R. and Ellen M. Kramer (“Complainants”) to certain public documents offered for judicial notice by Met-Ed, dated August 14, 2020. At the evidentiary hearing held in this matter, the Complainants were provided additional time to serve Objections to certain public documents identified for judicial notice by Met-Ed. The Complainants’ Objections are without merit and should be denied.

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.

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.¹

¹ 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).

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.

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.

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”).

47. An evidentiary hearing was held in this matter on June 29, 2020. At the hearing, the Complainants, sought additional time to object to the certain public documents offered by Met-Ed. The Complainants were granted until August 14, 2020 to do so.

II. ANSWER TO THE COMPLAINANTS’ OBJECTIONS

48. The Complainants objected to the exhibits numbered Met-Ed PD-1 through Met-Ed PD-5. Importantly, with respect to each of these exhibits, Met-Ed offered them as public document, for the ALJ and the Commission to take judicial notice of. *See, e.g.*, Tr. 185.

49. Section 5.408 of the Commissions regulations, 52 Pa. Code § 5.408, governs judicial notice of facts, and states:

§ 5.408. Official and judicial notice of fact.

(a) Official notice or judicial notice of facts may be taken by the Commission or the presiding officer.

(b) When the decision of the Commission or the presiding officer rests on official notice or judicial notice of a material fact not appearing in the evidence in the record, the parties will be so notified.

(c) Upon notification that facts are about to be or have been noticed, a party adversely affected shall have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed.

(d) The Commission or the presiding officer in its discretion will determine whether written presentations suffice, or whether oral argument, oral evidence or cross-examination is appropriate in the circumstances.

(e) The Commission or presiding officer may also give official notice as the term is defined in section 331(g) of the act (relating to powers of commission and administrative law judges).

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.173 (relating to official notice of facts).

50. At the outset, Met-Ed notes that the Complainants' Objections neither show "that the facts are not properly noticed" nor "that alternative facts should be noticed." 52 Pa. Code § 5.408(c). Therefore, none of the Complainants' Objections satisfy Section 5.408(c) of the Commission's regulations and should be denied.

51. Furthermore, as explained below, the specific Objections raised by the Complainants are without merit and should be denied.

Met-Ed PD-1: 66 Pa.C.S. § 2807.

52. The Complainants have withdrawn their objection to Met-Ed Exhibit PD-1.

Met-Ed PD-2: Smart Meter Procurement and Installation, Docet No. M-2009-2092655 (Order entered June 24, 2009).

53. The Complainants object to Met-Ed Exhibit PD-2 on two grounds, neither of which have any merit.

54. First, the Complainants assert that the exhibit is hearsay, because the persons "involved in the creation of the document were not at the hearing and available for questioning." Compl. Objections at II.A. However, Met-Ed offered this exhibit as a public document that the ALJ may take judicial notice of, pursuant to Section 5.408 of the Commission's regulations. The document was not offered to prove the truth of the matters asserted therein and therefore is not hearsay. *See* Pa.R.E. 801(c)(2). Moreover, even if it was hearsay, Met-Ed PD-2 is the Commission's final order in *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 entered June 24, 2009. The order: (1) describes the facts associated with the action taken by the Commission; (2) was prepared in the performance of the Commission's official public duties under the Public Utility Code; and (3) the Complainants have not demonstrated that the sources of information contained in the order, or other circumstances, show a lack of

trustworthiness. See PA.R.E. 803(8) (public records exception to hearsay). As such, the document satisfies the public records exception to hearsay.

55. Second, the Complainants attempt to dispute the Commission's interpretation of Act 129 and its authority to order electric distribution companies to develop and implement smart meter plans. Compl. Objections at II.B.-E. None of these statements go to the ALJ's or the Commission's ability to take judicial notice of the document. Rather, the Complainants are simply presenting legal argument regarding the merits of their Complaint. As such, the Complainants' Objections should be denied.

Met-Ed PD-3: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of its Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123950 (Order dated June 9, 2010).

56. The Complainants object to Met-Ed PD-3 as hearsay, and make additional legal arguments regarding the statements contained in the document. Compl. Objections at III.A-C.

57. Met-Ed references and incorporates its response to the Complainants' Objections to Met-Ed PD-2, in paragraphs 54-55 above, and submits that the Complainants' hearsay objection and objection based on their legal arguments on the merits of their Complaint should be denied for the same reasons.

Met-Ed PD-4: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Their Smart Meter Deployment Plan, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Final Order entered June 25, 2014).

58. The Complainants object to Met-Ed PD-4 as hearsay. Compl. Objections at IV.A.

59. Met-Ed references and incorporates its response to the Complainants' Objections to Met-Ed PD-2, in paragraph 54 above, and submits that the Complainants' hearsay objection to Met-Ed PD-4 should be denied for the same reasons.

Met-Ed PD-5: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of its Smart Meter Technology Procurement and Installation Plan, Docket No. M-200-2123950 (Order dated June 9, 2010).

60. The Complainants object to Met-Ed PD-5 as hearsay. Compl. Objections at V.A.

61. Met-Ed references and incorporates its response to the Complainants' Objections to Met-Ed PD-2, in paragraph 54 above, and submits that the Complainants' hearsay objection to Met-Ed PD-5 should be denied for the same reasons.

III. CONCLUSION

For the reasons set forth above, the Objections of Larry R. and Ellen M. Kramer to the hearing exhibits of Metropolitan Edison Company should be denied.

Respectfully submitted,



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Date: August 31, 2020

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Metropolitan Edison Company,	:	
	:	
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Answer of Metropolitan Edison Company to the Complainants' Objections to Public 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:

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

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

Dated: August 31, 2020



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