

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Judith D. Hendin,

Complainant

v.

Metropolitan Edison Company,

Respondent.

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Docket No. C-2018-3003324

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**LETTER OF CONCERN
DIRECTED TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dated: September 18, 2020

INTRODUCTION

Four things have occurred recently in connection with Ms. Hendin's case, and they are described here.

I. INAPPROPRIATE CONVERSATION ABOUT MS. HENDIN'S CASE, INITIATED BY AN EMPLOYEE AT THE PUC

An event occurred in connection with Ms. Hendin's case to opt out of a smart meter, and she felt the Pennsylvania Public Utility Commission should know about it. A bit of background is necessary to explain what happened.

Being *pro se*, Ms. Hendin began to write her Exceptions, and she had some formatting questions. So she called the PUC to learn the correct format and left messages at two offices, the Secretary's Bureau and the Office of Special Assistants (OSA). The OSA called back first. The person there, Laura Jarvie, gave clear and helpful guidelines, and Ms. Hendin spoke with her a few times. (Mrs. Jarvie gave permission for her name to be used here.)

A few days after the initial callback from the OSA, someone also called back from the Secretary's Bureau. What happened during that call is of concern, and will be described momentarily.

During a conversation, Mrs. Jarvie was clarifying that the contents of Exceptions need to be "on the record." She explained that OSA attorneys would read both parties' Exceptions and Reply Exceptions to determine that all the material was, in fact, on the record. Then Ms. Hendin said (not in these exact words, but close), "I'm sorry to ask this, but can those attorneys be trusted to be fair and impartial?" Mrs. Jarvie assured her they could.

"The reason I ask," Ms. Hendin continued, "is that the person who called me back from the Secretary's Bureau was not impartial. (Ms. Hendin chooses not to name this person here, though she did tell it to Mrs. Jarvie.) The man asked me what my case was about, and when I said the case

was to opt out of a smart meter, he started to explain that Act 129 is clear and right in saying that no opt outs are allowed. I said that I disagreed, and that Act 129 is an important part of this case. He said I didn't understand. I said I have studied this thoroughly for two years, and I do understand. Voices were raised. I finally ended the conversation.”

Ms. Hendin had never planned to tell this to anyone. It only came up when she expressed concern about her Exceptions getting a fair reading by the OSA. Mrs. Jarvie said the Secretary's Bureau representative should not have asked what the case was about. Ms. Hendin thought that was the end of the matter.

Then, when another formatting question arose, Ms. Hendin called Mrs. Jarvie again. At this time, Mrs. Jarvie said she had thought the actions of the Secretary's Bureau member were inappropriate, so she had contacted her Supervisor, who then contacted the Bureau Director of the OSA and also the Bureau Director of the Secretary's Bureau to alert them to the situation.

Ms. Hendin now feels it is important to include this incident as part of her case. Perhaps the man from the Secretary's Bureau was the only person at the PUC with this opinion. Or perhaps he is indicative of the culture of the PUC, that has already decided that smart meter cases cannot, and will not, win. One hopes that is not the case.

II. FORMATTING OF EXCEPTIONS

This is not so much a legal matter as it is a matter of procedure (if that is the correct phrase) for the PUC to consider, which may also give practical information that may be of use to the Commission.

In Met-Ed's Reply to Exceptions, they said that the formatting of Ms. Hendin's Exceptions was incorrect. They specifically mentioned font size and line spacing, and they cited 52 Pa. Code 1.32(a)(2). They asked the Commission “to reject these Exceptions outright.” At 2.

Of course, this frightened Ms. Hendin, and she wants to explain what happened and respectfully suggest that the Secretary might make a slight adjustment in the instructional letter to prevent this sort of thing from occurring in the future.

As mentioned above in section I, being a *pro se* Complainant, Ms. Hendin wanted to file her Exceptions in the proper format, so she contacted the OSA to get guidelines. She spoke with Mrs. Jarvie, who pulled up the two codes mentioned in the Secretary's letter. The letter said:

Exceptions and Replies to Exceptions shall follow 52 Pa. Code §§5.533 and 5.535 particularly the 40-page limit for Exceptions and the 25-page limit for Replies to Exceptions.

Mrs. Jarvie instructed Ms. Hendin according to 52 Pa. Code §§5.533, which says:

Procedure to except to initial, tentative and recommended decisions

(a) In a proceeding, exceptions may be filed by a party and served within 20 days after the initial, tentative or recommended decision is issued unless some other exception period is provided. Exceptions may not be filed with respect to an interlocutory decision.

(b) Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision.

Supporting reasons for the exceptions shall follow each specific exception.

(c) The exceptions must be concise. The exceptions and supporting reasons must be limited to 40 pages in length. Statements of reasons supporting exceptions must, insofar as practicable, incorporate by reference and citation, relevant portions of the record and passages in previously filed briefs. A separate brief in support of or in reply to exceptions may not be filed with the Secretary under § 1.4 (relating to filing generally).

(d) An original shall be filed with the Secretary under § 1.4. Filing users may file electronically as provided by § 1.37(b) (relating to number of copies).

(e) Unless otherwise ordered by the Commission, the provisions of §§ 1.11(a)(2) and (3) and 1.56(b) (relating to date of filing; and date of service) will not be available to extend the time periods for filing exceptions.

(f) Subsections (a)-(e) supersede 1 Pa. Code §§ 35.211 and 35.212 (relating to procedure to except to proposed report; and content and form of briefs on exceptions).

During their conversation, Ms. Hendin asked Mrs. Jarvie if there were any font size requirements and was told there were none. Ms. Hendin did not think to ask about line spacing because she had looked at several other Exceptions, by both a lawyer and several *pro se*

complainants, and various line spacings had been used, so she thought that was flexible. For her own Exceptions, she chose 11-point font and 1.15 line spacing, which is slightly larger than single spacing. She used this for all text, including most of the indented quotations.

In their Reply Exceptions, Met-Ed cited section 1.32(a)(2), which says:

Printed documents must be at least 10-point type on unglazed paper, cut or folded so as not to exceed 8 1/2 inches wide by 11 inches long, with inside margin at least 1 inch wide, and with double-ledged text and single-ledged, indented quotations.

This section 1.32(a)(2) was not mentioned in the Secretary's instructional letter. Nowhere in sections §§5.533 or 5.535 does it say anything about font size or line spacing. Nor do those sections refer the reader to section 1.32(a)(2). The first time Ms. Hendin learned about this section was in Met-Ed's Reply Exceptions.

As *pro se*, she would not know to go to the other section for more information unless the Secretary's letter had instructed her to do so. Even the member of the Office of Special Assistants was not aware of this section. From the little Ms. Hendin understands of the codes, there is a lot in them, and no one could be expected to know all of the content.

Thus, as *pro se*, Ms. Hendin formatted her Exceptions following the instructions in the Secretary's letter and the OSA member's guidance.

III. DATE OF SUBMISSION OF EXCEPTIONS

Similar to the preceding point, this is not so much a legal matter as it is a matter of procedure (if that is the correct phrase) for the PUC to consider, which may give practical information that may be of use to the Commission.

In their Reply Exceptions, Met-Ed said Ms. Hendin should have sent the Exceptions to them on the day they were due at the PUC, instead of the following day. They said this "warrants denial of the Exceptions." At 1.

As a *pro se* Complainant, Ms. Hendin relied on Secretary Chiavetta's letter of instructions on how to file Exceptions and Reply Exceptions. That letter included these four points, in this order. (Only relevant text is included here.):

1. Your signed Exceptions to the decision, if any, must be: 1) filed with the Secretary of the Commission, and 2) within twenty (20) days of the date of this letter.
2. In addition to filing with the Secretary of the Commission, a courtesy copy of your Exceptions must be emailed to the Commission's Office of Special Assistants (OSA) at ra-OSA@pa.gov.
3. It is your responsibility to serve all the parties with your Exceptions and Replies to Exceptions. Failure to do so may render your filing unacceptable.
4. A certificate of service (see format in 52 Pa. Code §1.58) shall be attached to the filed Exceptions or Replies to Exceptions.

Here is what Ms. Hendin thought and did:

1. Following the instructions in the first point, Ms. Hendin e-filed her Exceptions to the Secretary on the due date.
2. The second point talked about sending a "courtesy copy" to the OSA, and did not include a due date.
3. The third point also did not give a due date, and while Ms. Hendin's intention was to serve the parties on the same day, she was exhausted, and didn't think it would be a problem to send it the next day, which she did.
4. She had copy-and-pasted the Certificate of Service from another document, inserting her own date, and did not realize that the phrase, "I hereby certify that on August 27, 2020, I caused to be served a true and correct copy of the foregoing via

email upon the following:” meant that she should have served the parties on that exact day.

5. Also, when Ms. Hendin e-filed her Exceptions, her Certificate of Service listed Judge Cheskis, with a note saying that he was being served “through PUC e-file.” She assumed that by filing via the e-filing system on the PUC’s website, that she was filing it to the judge.

As *pro se*, Ms. Hendin strives to adhere to Commission regulations. She apologizes for this *pro se* misunderstanding, and respectfully suggests that a minor modification to the Secretary’s instructional letter could clarify this for *pro se* complainants—something as simple as, “It is your responsibility to serve all the parties with your Exceptions and Replies to Exceptions **on the same day that you file with the Secretary of the Commission.**”

IV. POINT OF CONCERN ABOUT MET-ED’S REPLY TO EXCEPTIONS

As always, Ms. Hendin wants to follow proper procedure, and she understands that she is not allowed to respond to Met-Ed’s Reply to Exceptions. However, the Reply contains several statements that are factually incorrect, and she wondered if these errors would be caught by the OSA readers. Ms. Hendin again called Mrs. Jarvie, who assured her that the OSA members are good at checking all the facts. Ms. Hendin mentioned one error in particular, and Mrs. Jarvie said she could include this point in the Letter of Concern and would not be penalized for doing so.

Here, then, is one particular factual error about an important aspect in this case: On page 11 of their Reply to Exceptions, Met-Ed said, “The Complainant...**does not know** if [the previous meter] was, in fact, removed and exchanged.” They cited Transcript 59-60. [emphasis added]

Here are citations from the record that show that this statement is factually incorrect:

- a. The transcript that Met-Ed cited actually said, “...[T]hey had a record of when it

was removed.” At 60.

- b. Statement of Ms. Hendin said, “We do know that UGI removed the smart meter on September 16, 2012.... The smart meter was removed on September 16, 2012, after which I stopped having symptoms.” At 5:96-97; 103-104.
- c. Hendin’s Main Brief said, “Dr. Kracht issued a Letter of Medical Necessity to UGI and the smart meter was removed on September 16, 2012.”
- d. Hendin’s Reply Brief said, “After the smart meter was removed in September, most of Ms. Hendin’s symptoms abated.” At 20.

There are additional citations showing that Ms. Hendin knew the previous smart meter had been removed, but this should suffice to show the factual error.

Thank you for your kind attention to these matters.

Respectfully submitted,

/s/ Judith D. Hendin

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Dated: September 18, 2020

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2020, I caused to be served a true and correct copy of the foregoing via email upon the following:

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

Lauren Lepkoski
llepkoski@firstenergycorp.com

Office of Special Assistants
ra-OSA@pa.gov

By: /s/ Judith D. Hendin
Judith D. Hendin