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October 7, 2020

VIA E-FILING

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

Re: Lori and Myung Bae v. Metropolitan Edison Company
Docket No. C-2018-3003332

Dear Secretary Chiavetta:

Enclosed for filing in the above-referenced matter are Metropolitan Edison Company's ("Met-Ed" or the "Company") Replies to the Exceptions of Lori and Myung Bae. This document has been served on all parties as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Tori L. Giesler

krak
Enclosures

c: As Per Certificate of Service
Office of Special Assistants (*via email at ra-OSA@pa.gov*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LORI AND MYUNG BAE :
 :
 V. : **DOCKET NO. C-2018-3003332**
 :
METROPOLITAN EDISON COMPANY :

**REPLIES OF METROPOLITAN EDISON COMPANY TO THE
EXCEPTIONS OF LORI AND MYUNG BAE**

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Date: October 7, 2020

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I. INTRODUCTION

Metropolitan Edison Company (“Met-Ed” or the “Company”), pursuant to 52 Pa. Code § 5.535, hereby respectfully submits these Replies to the Exceptions of Lori and Myung Bae (“Complainants”). On July 29, 2020, the Pennsylvania Public Utility Commission (“Commission”) issued Administrative Law Judge Jeffrey A. Watson’s (“ALJ”) Initial Decision (“ID”), which dismissed the Complainants’ Formal Complaint with prejudice because they failed to attend the evidentiary hearing scheduled for the date they selected and prosecute their Formal Complaint.

On September 28, 2020, the Complainants filed their Exceptions to the ID.¹ In their Exceptions, the Complainants do not provide any reason for their failure to attend the evidentiary hearing and prosecute the Complaint. Rather, the Complainants only allege that the installation of Met-Ed’s smart meter would cause, contribute to, or exacerbate adverse health effects.

As explained herein, the Complainants’ Exceptions are without merit and should be denied. Accordingly, the Company respectfully requests that the Commission deny the Exceptions and adopt the well-reasoned ID without modification.

II. REPLIES TO EXCEPTIONS²

A. REPLY TO EXCEPTION NO. 1 – THE ALJ PROPERLY DISMISSED THE FORMAL COMPLAINT WITH PREJUDICE

In their Exceptions, the Complainants only argue that the Initial Decision should be reversed because the Company’s smart meter, if installed, would allegedly cause, contribute to, or exacerbate adverse health effects. (Exceptions at 1-2.) The Complainants do not contest the ALJ’s

¹ Met-Ed notes that the Commission’s Secretary’s Bureau granted a 40-day extension for the Complainants to file their Exceptions. *See* Secretarial Letter, Docket No. C-2018-3003332 (Sept. 10, 2020).

² The Complainants do not number their Exceptions as required by the Commission’s regulations. *See* 52 Pa. Code § 5.533(b). However, their entire filing solely focuses on their allegations that the smart meter would cause, contribute to, or exacerbate adverse health effects. Therefore, Met-Ed treats the entirety of their “Exceptions” as Exception No. 1.

finding that they failed to appear at the evidentiary hearing and prosecute their Complaint, nor do they provide any explanation for their failure to participate in the evidentiary hearing. (*See* Exceptions at 1-2; ID at 7-9.) On that ground alone, the Complainants' Exceptions should be denied.

Notwithstanding, in the following sections, Met-Ed demonstrates that: (1) the Complainants were afforded due process and failed to prosecute their Complaint; and (2) the Commission should address neither the merits of the Complainants' health-related allegations nor their request for an opt-out of the smart meter installation.

1. The Complainants Were Afforded Due Process and Failed to Prosecute Their Complaint

The ALJ properly dismissed the Formal Complaint because the Complainants were afforded due process and failed to prosecute their Complaint. It is well-established that administrative agencies, such as the Commission, as required to provide due process to the parties appearing before them. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (citation omitted). However, due process is satisfied when the parties are afforded notice and the opportunity to be heard. *Id.* (citation omitted). Further, when a party fails to appear at a scheduled hearing, the Commission's regulations state that the party: (1) waives "the opportunity to participate"; (2) is "[n]ot permitted thereafter to reopen the disposition of a matter accomplished at the . . . hearing"; and (3) is "[n]ot permitted to recall witnesses who were excused for further examination." 52 Pa. Code § 5.245(a)(1)-(3).

Here, the Complainants were properly afforded due process. The Complainants were sent a Hearing Notice dated June 16, 2020, which explicitly stated that their failure to appear at the hearing scheduled for July 16, 2020, would result in their case being dismissed. *See* Hearing Notice, Docket No. C-2018-3003332 (June 16, 2020) ("**At the above date and time, you must**

call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Presiding Officer.”) (emphasis in original). Although the Complainants allegedly did not receive a prior Hearing Notice when the hearing was scheduled for February 12, 2020, that Notice was sent to the Complainants’ incorrect email address. (Tr. 5.) The ALJ and the Secretary’s Bureau updated the Complainants’ email since that time and ensured that the Hearing Notice dated June 16, 2020, was sent to the correct email address. (Tr. 5-6.) This was the same email address that counsel for Met-Ed used to communicate with the Complainants prior to the July 16, 2020 hearing. (Tr. 6-7.)

The Complainants also never called the ALJ’s office the day of the July 16, 2020 hearing, nor did they request a continuance of that hearing. (Tr. 6.) Further, Met-Ed also sent copies of its hearing exhibits to the Complainants on July 8, 2020. The cover letter accompanying those exhibits stated that “[a] telephonic hearing has been scheduled for July 16, 2020 at 10:00 a.m. *See* Letter Serving Exhibits, Docket No. C-2018-3003332 (July 8, 2020).

In addition, the Complainants helped select this date for the evidentiary hearing. On April 10, 2020, Met-Ed filed a status report, in which the Company stated that the parties had agreed to hold a hearing on, among other dates, July 16, 2020. *See* Status Report, Docket NO. C-2018-3003332 (Apr. 10, 2020). Even still, neither of the Complainants appeared at the hearing.

Therefore, the Complainants were provided with several reminders of the date and time of the evidentiary hearing and were informed of the consequences of their failure to participate in the hearing. Yet, in their Exceptions, the Complainants still never provide any explanation for their failure to appear and prosecute the Complaint. Therefore, consistent with Commission precedent, the Formal Complaint was properly dismissed with prejudice for failure to prosecute. (ID at 7-9.)

2. The Commission Should Not Address the Merits of the Formal Complaint or the Complainants’ Requested Relief

In their Exceptions, the Complainants generally: (1) allege that the installation of Met-Ed's smart meter will cause, contribute to, and exacerbate adverse health effects; and (2) request that the Commission enable them to opt-out of the smart meter installation. (Exceptions at 1-2.)

The Company continues to maintain that it is legally required to install the new AMI meter and that the Complainants' health concerns are unfounded. If the Complainants had appeared at the hearing, Met-Ed was fully prepared to present its evidence and, if necessary, brief the legal issues in dispute.

However, the Formal Complaint was dismissed due to the Complainants' failure to appear at the scheduled evidentiary hearing and prosecute the Complaint. (ID at 7-9.) Consequently, no evidence was admitted into the record, and the ALJ did not rule on the merits of the Complainants' Formal Complaint. (ID at 7-9.) Thus, the Commission should not, as apparently requested by the Complainants in their Exceptions, rule on the merits of any factual or legal issues raised by the Formal Complaint, including the Complainants' requested relief.

For these reasons, the Commission should deny Exception No. 1 and adopt the well-reasoned ID without modification.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in the Initial Decision of Administrative Law Judge Jeffrey A. Watson, the Company respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions filed by Lori and Myung Bae and adopt the Initial Decision without modification.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Metropolitan Edison Company's Replies to Exceptions upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by email as follows:

Lori and Myung Bae
lhb1862@gmail.com

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

Dated: October 7, 2020



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