

July 28, 2021

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Docket No. C-2021-3026084
Billie Jo and Joseph Leisse v. Metropolitan Edison Company
Motion to Join Indispensable Party and Continuance of Met-Ed

Dear Secretary Chiavetta:

Attached for filing is the Motion of Metropolitan Edison Company to Join Windstream Communications, Inc. (Windstream) as an Indispensable Party to the Complaint filed by Billie Jo and Joseph Leisse (Complainants) and continuance of the scheduled hearing in the above-reference proceeding.

A copy of the Motion to Join Indispensable Party and Continuance has been provided to counsel for the Complainants and Windstream in the manner indicated on the enclosed Certificate of Service.

If there are any questions, please feel free to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/co
Enclosure

cc: The Hon. Marta Guhl, PA Public Utility Commission [w/encls.]
Tori Giesler, Esquire, FirstEnergy Service Company [w/encls.]
Andrew W. Muir, Esquire, Allerton Bell & Muir, P.C. [w/encl.]
Sarah Hays, Windstream Communications, Inc. [w/encls.]

**Re: Docket No. C-2021-3026084
Billie Jo and Joseph Lisse v. Metropolitan Edison Company
Motion to Join Indispensable Party and Continuance of Met-Ed**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons on the attached service list, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).


Via Electronic Mail

Andrew W. Muir, Esquire
Allerton Bell & Muir, P.C.
dmuir@allertonbell.com

Via Electronic Mail

Sarah Hays
sarah.k.hays@windstream.com

Dated: July 28, 2021



Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BILLIE JO AND JOSEPH LEISSE :
v. : Docket No. C-2021-3026084
METROPOLITAN EDISON COMPANY :

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103, you are hereby notified that if you do not file a written response answering the enclosed Motion to Join Indispensable Party of Metropolitan Edison Company within **five (5) days** from service of this notice, the facts set forth by Metropolitan Edison Company in the Motion may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Metropolitan Edison Company, Margaret A. Morris, Esq., and the Honorable Marta Guhl, the Administrative Law Judge presiding over the issue.

File with:

Rosemary Chiavetta, Esquire
Secretary
Pennsylvania Public Utility Commission
rchiavetta@pa.gov

With a copy to:

Margaret A. Morris, Esquire
Reger Rizzo & Darnall LLP
mmorris@regerlaw.com

The Hon. Marta Guhl
mguhl@pa.gov



Date: July 28, 2021

Margaret A. Morris, Esquire
Attorney ID No. 75048
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 (tel.)
mmorris@regerlaw.com

Counsel for Metropolitan Edison Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BILLIE JO AND JOSEPH LEISSE :
v. : Docket No. C-2021-3026084
METROPOLITAN EDISON COMPANY :

**MOTION OF METROPOLITAN EDISON COMPANY
TO ADD NECESSARY PARTY AND
CONTINUANCE OF SCHEDULED HEARING**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Metropolitan Edison Company (Met-Ed), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.103, hereby submits this Motion to Join Indispensable Party (Motion) in the above-referenced matter pursuant to Section 5.103 of the regulations of the Pennsylvania Public Utility Commission (Commission), 52 Pa. Code § 5.103, and states as follows:

1. In this Motion, Met-Ed requests to join Windstream Communications, Inc. (Windstream) as an indispensable party to a Formal Complaint filed by Billie Jo and Joseph Leisse (Complainants) at the above-captioned docket, as the allegations regarding the work performed at their residence was, in part, performed by Windstream. The Complainants did not list Windstream in their Complaint but the relief requested, in part, relates to work done by Windstream (Complaint ¶ 5.)
2. The Complainants allege that the utility work performed at 305 Old Airport,

Douglassville, Pennsylvania (Service Location) did “damage to our entire yard from their heavy equipment needed to repair damage they caused from tearing up underground wires.” (Complaint ¶45.)

3. In its Answer and New Matter, Met-Ed denied that it had dug up the backyard or that it did repairs to its underground facilities. Met-Ed averred that those actions were performed by Windstream who had facilities on Met-Ed’s pole which were not properly placed and needed to be corrected. As a result, Windstream dug the trench in the backyard to properly place its underground facilities and transferred its facilities from the old pole to the new pole and removed the old pole on June 8, 2021.

4. A hearing in this matter is scheduled for August 6, 2021 before the Honorable Martha Guhl (Judge Guhl).

5. In Pennsylvania, “an indispensable party is one whose rights are so directly connected with and affected by litigation that he must be a party of record to protect such rights, and his absence renders any order or decree of court null and void for want of jurisdiction. *Columbia Gas Transmission Corporation v. Diamond Fuel Company*, 464 Pa. 377, 346 A.2d 788 (1975); *City of Philadelphia, et al v. Commonwealth of Pennsylvania, et al*, 575 Pa. 542 (Pa. 2003); *Barren v. Dubas*, 295 Pa. Super, 443, 445 (Pa. Super Ct. 1982).

6. Failure to join an indispensable party goes absolutely to the court's jurisdiction and, if not raised by the parties, should be raised *sua sponte*. *Posel v. Redevelopment Authority of Philadelphia*, 72 Pa. Commw. 115, 121 (Pa. Cmwlt. 1983).

7. The Pennsylvania Supreme Court has established that “the basic inquiry in determining whether a party is indispensable concerns whether justice can be done in the absence of a third party... In order to make the analysis, however, one must refer to the nature of the claim

and relief sought.” *Cry, Inc. v. Mill Service, Inc.*, 536 PA. 462, 486-69 (Pa. 1994).

8. Adopting the criteria articulated in *Mechanicsburg Area School District v. Kline*, 494 Pa. 476 (Pa. 1981), the court’s test for determining indispensability involved “at least” the following considerations:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of that right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating the due process rights of absent parties?

9. In regard to the first factor, Windstream has a right or interest to the claim. The alleged damage, in part, relates to the trench dug and the work performed by Windstream.

10. With respect to the second consideration of the test, Windstream could be liable for the alleged damage in a civil action.

11. With respect to the third consideration of the test, Windstream’s interest is essential to the merits of the case because much of the Complaint focuses, in part, on the work performed by Windstream. Met-Ed cannot answer for Windstream, a separate and distinct company. The relief sought by Complainants necessarily involves Windstream.

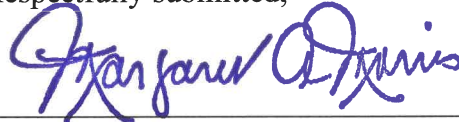
12. In regard to the fourth consideration, not joining Windstream, when its actions are so central to the Complaint, would violate its due process rights. Windstream has its facilities on the electric pole owned by Met-Ed and lawfully placed underground in the Complainants’ backyard. In part, it is the work performed by Windstream that is the basis for the Complaint. Windstream has a right to defend the work performed and any adjudication concerning Windstream’s actions without its presence would violate its due process rights.

13. The hearing scheduled for August 6, 2021, should be continued so that a determination can be made regarding Windstream's interest in the present proceeding.

WHEREFORE, Metropolitan Edison Company, requests that Windstream Communications, Inc. be joined as an indispensable party in this proceeding and that the scheduled hearing be continued until the interest of Windstream Communications, Inc. in the present proceeding is determined.

Date: July 28, 2021

Respectfully submitted,



Margaret A. Morris, Esq.

Attorney ID No. 75048

Reger Rizzo & Darnall LLP

Cira Centre, 13th Floor

2929 Arch Street

Philadelphia, PA 19104

(215) 495-6524 tel.

mmorris@regerlaw.com

Counsel for Metropolitan Edison Company