

November 13, 2022

The Honorable Mark A. Hoyer
The Honorable John Coogan
Administrative Law Judges
Pennsylvania Public Utility Commission
Harrisburg, PA 17105-3265

Re: Docket No. C-2021-3028286, et al.
Michael Florio v. First Energy,
Metropolitan Edison Company and
Mid-Atlantic Interstate Transmission, LLC
Rebuttals to Respondents Direct Written Testimonies

Dear Judges Hoyer and Coogan:

Attached please find the Rebuttals to Respondents Direct Written Testimonies in connection with the above referenced and consolidated proceeding.

As evidenced by the enclosed Certificate of Service, all involved parties will be served, as indicated.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael R. Florio".

Michael R. Florio
1965 Sand Hill Rd
Hershey, PA 17033

November 13, 2022

Via Electronic Filing

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

Re: Docket No. C-2021-3028286, et al.
Michael Florio, et al. v. Metropolitan Edison Co., et al.
Rebuttals to Respondents Direct Written Testimonies

CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing document has been served upon the following persons in connection with the above-referenced and consolidated proceedings, in the manner indicated, in accordance with the requirements.

Via Electronic Mail

Hon. Mark A. Hoyer, PA Public Utility Commission
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If there are any questions, please contact me at (717) 460-5783.

Sincerely,



Michael R. Florio
1965 Sand Hill Rd
Hershey, PA 17033

List of pertinent proceedings that have been consolidated below:

C-2021-3028186- DEBORA CONNELL v. METROPOLITAN EDISON COMPANY & MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

C-2021-3028464-TRACY AND JILL TROUTMAN V. METROPOLITAN EDISON COMPANY & MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

C-2021-3028278- REBECCA WALIZERV. METROPOLITAN EDISON COMPANY & MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

C-2021-3028416- NEAL WALMER v. METROPOLITAN EDISON COMPANY & MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

C-2021-3028211 - MICHAEL AND MARGARET MARINO v. METROPOLITAN EDISON COMPANY & MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

C-2021-3028346- STANLEY & EILEEN KRASINSKI v. METROPOLITAN EDISON COMPANY & MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

C-2021-3028286- MICHAEL FLORIO v. METROPOLITAN EDISON COMPANY & MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

C-2021-3028283-SAMANTHA BRYANTv. METROPOLITAN EDISON COMPANY & MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

C-2021-3028314- MICHAEL KRAMER v. METROPOLITAN EDISON COMPANY & MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

C-2021-3028414-ANDREW S. FREIBERG v. METROPOLITAN EDISON COMPANY & MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

C-2021-3028418- KAREN FEDASH v. METROPOLITAN EDISON COMPANY & MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

C-2021-3030530- GREGORY BAIR v. METROPOLITAN EDISON COMPANY & MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

C-2021-3028302-PINGQI DAI v. METROPOLITAN EDISON COMPANY

C-2021-3028348- COREY & BETTY RIGBERG v. METROPOLITAN EDISON COMPANY

C-2021-3028627-PATRICIA LANE V. METROPOLITAN EDISON COMPANY

Updated 06101122

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Florio, et al.

v.

Metropolitan Edison Company, et al.

Docket No. C-2021-3028286, et al.

**Rebuttals to Respondents Direct Written Testimonies by
Michael Florio**

Date Submitted for the Record: November 13, 2022

1 **Rebuttal of Kevin C. Irvine Direct Written Testimony**

2 **MAIT Statement No. 1**

3
4 **Testimony:**

5 Mr. Irvine states, on pages two and three, as a matter of background, that he is employed by
6 FirstEnergy Service Company as an engineer in the Project Development Project Management
7 organization. Employment in his current position began October 23, 2022. His testimony is on
8 behalf of MAIT.

9 Mr. Irvine indicates that his duties and responsibilities will include “supervising design
10 consultants responsible for supporting siting and permitting, survey coordination, structure
11 design, foundations design, overhead line design, and scoping and cost estimate
12 development”.

13 **Points of Rebuttal:**

14 Mr. Irvine was placed in this position exactly one day prior to the respondents’ due date for
15 their Direct Written Testimony.

16 Respectfully, we ask has he visited this site and in his capacity as an engineer, has he had
17 sufficient time to appropriately inspect and analyze this specific project in consideration of
18 what he read in the formal complaints noting ALL concerns and paying special attention to the
19 health and safety concerns of the complainants?

20
21 **Testimony:**

22 Mr. Irvine states that he has read the formal complaints and the amended formal complaints
23 filed by the Complainants in this proceeding (p2, lines 21-23).

24 **Point of Rebuttal:**

25 This indicates he has read the formal and amended complaints; however, he has NOT indicated
26 that he read the consolidated Direct Written Testimony (DWT) which should be an important
27 part of his decision-making process regarding overhead versus underground transmission lines.

28 **Testimony:**

29 Q. “Why is the Transmission Line being rebuilt?” (p.4, lines 6-11)

30 In response, Mr. Irvine states “the transmission line is being rebuilt due to aged facilities and to
31 meet mandatory obligations under Section 1501 of the Pennsylvania Public Utility Code to
32 provide safe, reasonable and adequate service to its customers.”

34 **Points of Rebuttal:**

35 Mr. Irvine describes this project as a rebuild. However, the present structure is being fully
36 removed and relocated with all new materials being provided in the new construction. This is
37 not a “rebuild” this is a NEW BUILD. Because it is a NEW BUILD FirstEnergy, Met-Ed and MAIT
38 should be required to follow Derry Township code which requires all new utilities to be
39 undergrounded.

40 **Secondly, a more complete citation of the PUC Code, Section 1501, was added on November**
41 **26, 1978 and effective in 60 days, and states “Every public utility shall furnish and maintain**
42 **adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs,**
43 **changes, alterations, substitutions, extensions, and improvements in or to such service and**
44 **facilities as shall be necessary or proper for the accommodation, convenience, and safety of**
45 **its patrons, employees, and the PUBLIC.”**

46 The above code INCLUDES “safety of its patrons, employees, AND the PUBLIC.”

- 47 • Health and Safety concerns submitted within the DWT are listed below:
 - 48 ○ Two perilous incidents involving overhead transmission lines with witness
 - 49 accounts (DWT p. 21 lines 445-466)
 - 50 ○ Injury and death from electrocutions (numerous articles noted in the DWT pp.
 - 51 10-13 lines 222-338 involve companies including those affiliated with
 - 52 FirstEnergy).
 - 53 ○ The US National Institute of Environmental Health Sciences (NIEHS) described
 - 54 the scientific evidence suggesting that electromagnetic field exposure poses a
 - 55 health risk as weak but noted that it cannot be recognized as entirely safe, and
 - 56 considered it to be a “possible human carcinogen”.
 - 57 <http://www.niehs.nih.gov/health/topics/agents/emf/>
 - 58 ○ The poles used in our project will be treated with Pentachlorophenol (PCP) as
 - 59 per Ms. Morris’s response within the Discovery Request as seen in Exhibit 12 of
 - 60 the DWT. PCP is a pesticide and wood preservative.
 - 61 ▪ Due to the dangers of PCP manufacture, handling, and use, “on
 - 62 February 4, 2022, EPA issued a final registration review decision
 - 63 requiring the cancellation of PCP.... Use of PCP is being phased out
 - 64 over five years beginning in 2022. Production, sales, and
 - 65 distribution of PCP will be banned on February 29, 2024 and wood
 - 66 treatment facilities will be allowed to use their existing stocks of
 - 67 PCP to produce treated wood until February 28, 2027”.
 - 68 [https://www.epa.gov/ingredients-used-pesticide-](https://www.epa.gov/ingredients-used-pesticide-products/pentachlorophenol)
 - 69 [products/pentachlorophenol.](https://www.epa.gov/ingredients-used-pesticide-products/pentachlorophenol)

70 As noted in our DWT (pp. 8-9 lines 157-220), referenced studies show:

- 71 ▪ PCP is carcinogenic.
- 72 ▪ Environmental conditions are usually unfavorable for
- 73 biodegradation.
- 74 ▪ Treated utility pole placement near private water sources can
- 75 increase likelihood of drinking water contamination. In Vermont,
- 76 existing utility poles sited within 200 feet of a source of drinking
- 77 water shall not be treated with any wood preservative. New or
- 78 replacement utility poles treated with any wood preservative shall
- 79 not be sited within 200 feet of a source of drinking water.
- 80 ▪ Children should avoid touching or playing near utility poles
- 81 treated with PCP.

82 Our children play in our yards where these poles are placed. ALL of our local
83 residents are solely dependent on well water as their only source of potable
84 drinking water. The use of this chemical creates a very serious, unnecessary,
85 unwarranted, and dangerous risk to all residents in this neighborhood and
86 beyond.

- 87 • Additional health and safety concerns regarding project design will follow. In addition
88 to the above stated concerns is the proposed placement of the pole(s) on my property.
89 I have to point out that this is based on wooden stakes placed on my property. Despite
90 assurances from Ms. Morris that a diagram would be sent to me portraying the location
91 of poles and lines across my property, this has not occurred. One of the wooden stakes
92 is in the middle of a drainage ditch berm that is on the southern portion of my property.
93 This is also in my deed. Placing a pole in this location threatens the stability of berm. Our
94 neighborhood is already dealing with soil erosion near Nye Rd due to poor design and
95 execution and do not need another problem.

96 **Testimony:**

97 When asked to describe the proposed facilities for the Transmission Line, Mr. Irvine states on p.
98 4 lines 12-19, “The Project will replace nine (9) wooden poles averaging 52 feet with seven (7)
99 new wood poles averaging 59 feet. The seven (7) existing overhead wires will be replaced with
100 four (4) overhead wires (3 conductors and a shield/ground wire)”.

101 **Points of Rebuttal:**

102 Construction of overhead transmission lines through a residential neighborhood is an outdated
103 and unsafe concept. This new transmission line will be similar in kind to the same 60+ year old
104 transmission line currently in place which was installed over rural land used solely for farming.
105 Today, the vibrant residential community underlying this transmission line is better educated,
106 much more aware of the dangers associated with this type of design, and also aware of the
107 safer, more modern option of undergrounding. Many utilities for reasons of health, safety,

108 reliability, and long-term cost savings are undergrounding. (DWT Benefits of Underground and
109 Trends to Underground pp. 27-28 lines 628-704 and p.35 lines 812-825; Costs pp. 24-25 lines
110 533-571; Undergrounding needs to be reassessed pp. 32-34 lines 724-810).

111 Why would FirstEnergy, Met-Ed, and MAIT want to implement an outdated, overhead design
112 when a more modern and safer option of undergrounding is available?

113 Furthermore, the proposed new overhead transmission line design increases health risk and
114 safety concerns as noted in the DWT (p.19 lines 408-423 and diagram 4). The poles positioned
115 further apart (with longer spans of wiring) will create potential for significantly greater sweep
116 radii for downed live wires. Due to this new build, many more residents than present will be at
117 serious risk for a significant life changing event, such as injury or death.

118 SAFETY is our primary concern for all of the residents impacted by the existence of these
119 overhead transmission lines. Our neighborhood is not serviced by these lines; however,
120 assumes all the risk.

121 **Testimony:**

122 Mr. Irvine states on page 4 lines 17-19 that “the proposed location of structures minimizes
123 material and construction costs which resulted in fewer structures than the existing layout. The
124 proposed wires were selected to minimize cost and meet capacity requirements.”

125

126 **Points of Rebuttal:**

127 Ms. Morris’s response to Discovery Request in Exhibit 12 of the DWT echoed Mr. Irvine’s
128 testimony above that “structures were located to minimize material and construction costs”
129 (DWT p. 26 lines 607-609).

130 Reflected in Mr. Irvine and Ms. Morris’s previous statements is the answer as to why the
131 respondents have settled on the outdated overhead design; that answer is COST. Initially it is
132 less costly to install an overhead transmission line. However, undergrounding is the safest
133 option, especially for a residential community. We believe it was never given fair consideration
134 as noted by Ms. Morris’s statement, “A high level review of replacing these lines was
135 considered but more detailed design is required to produce a cost estimate”.

136

137 **Testimony:**

138 Mr. Irvine ends this question and response by stating “this design is consistent with current
139 industry best practices” (p.4 lines 18-19).

140 **Points of Rebuttal:**

141 Mr. Irvine is making a very broad, general statement without providing any specific context,
142 reference, or proof indicating its accuracy.

143 According to <https://www.lawinsider.com> **Industry Best Practices** means a
144 management idea asserting that, for a given industry, there is a body of techniques,
145 methods, processes, activities, incentives and/or rewards that is more effective at
146 delivering a particular outcome than any other body of techniques, methods,
147 processes, etc. (i.e., with a proper system of processes, checks and testing, a desired
148 outcome can be delivered with fewer problems and unforeseen complications).

149 Note in the definition above in reference to Industry Best Practices: "... there is a body of
150 techniques, methods, processes, activities, incentives and/or rewards that is more effective at
151 delivering a particular outcome...i.e., ...a desired outcome can be delivered with fewer
152 problems and unforeseen complications." This is only **IF** Industry Best Practices are followed.

153 In this case, the best industry practices would include the goal of doing what is in the best
154 interest of the health and safety of the public as the 66 Pa. C.S. code 1501 directs and **MUST** be
155 followed.

156

157 **Testimony:**

158 Mr. Irvine states that "no permanent guy wires will be utilized between Sand Hill Road and Nye
159 Road on the Project" (p. 5, lines 12-15).

160 **Points of Rebuttal:**

161 Explain "permanent".

162 The original plan did include stabilizing guy wires on two poles in this specific area. The wires
163 were removed from the plans due to complaints that they were unsafe for children. They
164 would be considered an attractive nuisance that is likely to attract children but has the
165 potential of causing harm to them.

166 Explain how the project has been adequately re-engineered to safely accommodate for this
167 change.

168 **Testimony:**

169 Q. "Which complainants currently have facilities across their property?" He states that
170 "complainants Bryant, Connell, Florio, Dai, Krasinski, Freiberg, and Fedash" have facilities across
171 their properties. (p. 5, lines 16-17).

172 **Points of Rebuttal:**

173 This statement is factually inaccurate.

174 According to <https://www.lawinsider.com>, **Transmission Line Facility** means any
175 and all facilities and assets including, without limitation, any duct, wire, line, conduit,

176 pole, tower, equipment or other structure used for Transmission, including any of
177 the foregoing that are part of any Transmission Line or Transmission Substation
178 Facility, are connected to any Transmission Line or Transmission Substation Facility,
179 or are otherwise required to own, use or operate each Transmission Line or
180 Transmission Substation Facility in the manner owned, used or operated by Seller
181 prior to the Closing, but excluding (i) any Transmission Substation Facility and (ii)
182 those assets set forth on Schedule 1.1-K.

183 In his assessment, Mr. Irvine has omitted complainants Lane, Kramer, and Bair as having
184 facilities across their properties. However, complainants Lane, Kramer, and Bair do and will
185 continue to have power lines across and above their properties.

186 **Testimony:**

187 Q. “Which complainants will no longer have facilities across their property as a result of the
188 project? Mr. Irvine states that complainants Freiberg and Fedash will no longer have facilities
189 across their properties (p. 5, lines 18-20).

190 **Points of Rebuttal:**

191 This statement is inaccurate. The complainants Freiberg and Fedash will continue to have
192 facilities (power lines) across their properties.

193

194 **Rebuttal of Michael Espinoza Direct Written Testimony**

195 **Met-Ed Statement No. 1**

196 **Testimony:**

197 Q. “Which complainants currently have facilities across their respective property pursuant to
198 the recorded easement? “In response, Mr. Espinoza states “complainants Bryant, Connell,
199 Florio, Dai, Krasinski, Freiberg, and Fedash” currently have facilities across their properties (p. 3,
200 lines 16-18).

201 **Points of Rebuttal:**

202 This statement is inaccurate.

203 According to <https://www.lawinsider.com>, **Transmission Line Facility** means any and all
204 facilities and assets including, without limitation, any duct, wire, line, conduit, pole, tower,
205 equipment or other structure used for Transmission, including any of the foregoing that are
206 part of any Transmission Line or Transmission Substation Facility, are connected to any
207 Transmission Line or Transmission Substation Facility, or are otherwise required to own, use or
208 operate each Transmission Line or Transmission Substation Facility in the manner owned, used
209 or operated by Seller prior to the Closing, but excluding (i) any Transmission Substation Facility
210 and (ii) those assets set forth on Schedule 1.1-K.

211 Mr. Espinoza is also omitting complainants Lane, Kramer, and Bair as having “facilities across
212 their properties” when, in fact, complainants Lane, Kramer, and Bair will continue to have
213 power lines above and across their respective properties. Additionally, there are other
214 members of the community who have poles and lines running through their properties who
215 wrote emails to First Energy expressing their extreme dissatisfaction when first notified of the
216 plan for the replacement poles, namely the Rogers (210 Bittersweet Drive) and the Lennons
217 (215 Bittersweet Drive). First Energy never responded to their communications.

218
219 **Testimony:**

220 Q. “Referring you to Met-Ed Exhibit 2, did the respective deed for each complainant that has
221 facilities across its property specifically give notice of the recorded easement? “Mr. Espinoza
222 states “Yes. All the deeds, with the exception of the Lane deed contains the paragraph that
223 states: “UNDER and SUBJECT, NEVERTHELESS, to all reservations, restrictions, covenants,
224 conditions, easements leases and rights of way appearing of record” (p. 3, lines 19-23 and p.4,
225 lines 1-4).

226 **Points of Rebuttal (based on the actual deed evidence that Mr. Espinoza entered into**
227 **testimony):**

228 This statement is inaccurate.
229 The Lane deed appears to be the only one which does include this exact statement as quoted.
230 The Krasinski, Kramer, Connell, Bair, Fedash, and Florio deeds do make mention of an
231 easement, however not exactly as quoted.
232 The Shi and Dai deed states “Under and subject to conditions and restrictions which now
233 appear of record”.
234 More importantly, neither the Bryant deed nor the Freiberg deed appear to make any mention
235 of an easement.

236
237

238 **Summary of Our Position**

239 This document focuses on our rebuttal of the Respondents’ DWT, which mainly addresses the
240 physical construction of the proposed project (Mr. Irvine) and the easement with the properties
241 impacted (Mr. Espinoza).

242 However, as articulated in our DWT and in this rebuttal, our primary concern has always been,
243 and remains “our safety”. Remember, in all the electrocution cases noted, the PUC violations
244 were unknown until the investigations after the tragic incidents. Given that multiple incidents
245 have already occurred, and the fact that the likelihood of more incidents occurring in the future
246 is higher with overhead poles/lines than with underground lines, we are concerned and remain
247 steadfast in asserting that the transmission lines be placed underground through our
248 neighborhood (approx. 0.37 miles).

249 **Concluding Remarks**

250 The PUC code does state that service companies must provide a safe, reasonable, and adequate
251 service. However, there is no operational definition of ‘safety’. ‘Safety’ isn’t defined. Further,
252 Mr. Irvine states that this project is “consistent with current industry best practices”. How long
253 ago were these best practices determined? If we already had safety incidents, how can the
254 poles/overhead lines still be considered a ‘best practice’?

255 ‘Best practices’ evolve and change over time based on environmental factors, technology,
256 statistics, science, etc. Decades ago (when the easement was originally granted), the auto
257 industry didn’t have seat belts in cars. As more people bought autos and the incidence of injury
258 and death increased, safety came into the conscience of auto makers and consumers and lap
259 belts were developed. That became the ‘best practice’ and soon all cars had them. Years later,
260 the “best practice” evolved to include harness belts across the chest and lap and this became a
261 minimum standard. Then, studies and statistics suggested the need for additional safety

262 measures. Air bags were added to the use of safety belts and became the current auto
263 industry's "best practice" in safety for consumers. Despite added installation costs, auto makers
264 continue to perfect the seat belts and airbags to meet the expected safety standards for the
265 public. The auto industry prioritized safety of the public over cost.

266 Our point of this example is that the "Best Practice" of Safety must evolve over time and be
267 prioritized over cost. The "Best Practice" of Safety must also be situational. An Industry best
268 practice of safety for transmission lines going through a thriving neighborhood must be
269 different from, and held to a higher standard than the best practices of safety for transmission
270 lines going through an open field.

271 "Best" practice can only be achieved by building upon and doing better than the past. How can
272 the Respondents say that putting the transmission lines overhead is a 'best practice' of safety,
273 when there have already been incidents indicating otherwise. To us, this document is not only
274 rebutting what the Respondents say in their DWT, but also what they don't address – our
275 Safety. **We affirm that the best practice of safety in our neighborhood is to put the**
276 **transmission lines underground.**

277 **None of this risk for hazard is necessary. Undergrounding this short (0.37 miles) stretch of**
278 **transmission line will resolve this issue for all.**