

February 17, 2023

**Via Electronic Filing**

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

**Re: Docket No. C-2021-3028278, et al.  
Rebecca Walizer, et al. v. Metropolitan Edison Company, et al.  
Main Brief of Met-Ed and MAIT**

Dear Secretary Chiavetta:

Attached for filing is the Main Brief of Metropolitan Edison Company and Mid-Atlantic Interstate Transmission, LLC (collectively Respondents), in the above referenced consolidated proceeding.

A copy of the Main Brief has been forwarded to the Complainants in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/co  
Enclosure

cc: The Hon. Mark A. Hoyer, PA Public Utility Commission [w/encls.]  
The Hon. John Coogan, PA Public Utility Commission [w/encls.]  
Tori Giesler, Esquire, FirstEnergy Service Company [w/encls.]  
Service List [w/encls.]

**Re: Docket No. C-2021-3028278, et al.  
Rebecca Walizer, et al. v. Metropolitan Edison Company, et al.  
Main Brief of Met-Ed and MAIT**

**CERTIFICATE OF SERVICE**

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

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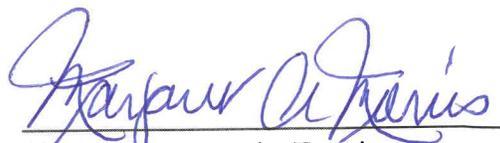
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Dated: February 17, 2023

  
Margaret A. Morris, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tracy and Jill Troutman	C-2021-3028464
Rebecca Walizer	C-2021-3028278
Neal Walmer	C-2021-3028416
Michael and Margaret Marino	C-2021-3028211
Stanley and Eileen Krasinski	C-2021-3028346
Michael Florio	C-2021-3028286
Samantha Bryant	C-2021-3028283
Michael Kramer	C-2021-3028314
Andrew Freiberg	C-2021-3028414
Karen Fedash	C-2021-3028418
Gregory Bair	C-2022-3030530

v.

Metropolitan Edison Company  
Mid-Atlantic Interstate Transmission, LLC

Pingqi Dai	C-2021-3028302
Debora Connell	C-2021-3028186
Corey and Betty Rigberg	C-2021-3028348
Patricia Lane	C-2021-3028627

v.

Metropolitan Edison Company

**MAIN BRIEF OF  
METROPOLITAN EDISON COMPANY AND  
MID-ATLANTIC INTERSTATE TRANSMISSION, LLC**

Date: February 17, 2023

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**Table of Contents**

TABLE OF AUTHORITIES ..... iii, iv

STATEMENT OF THE CASE..... 1-3

    Introduction..... 1

    History of the Proceeding ..... 1-3

SUMMARY OF ARGUMENT ..... 3

LEGAL BURDEN ..... 4-7

    Burden of Proof..... 4-5

    Adequate, Efficient, Safe and Reasonable Electric Service..... 5-7

RECORD EVIDENCE ..... 7-8

    Complainants’ Evidence ..... 7

    Respondents’ Evidence ..... 7-8

ARGUMENT ..... 8-10

PROPOSED FINDINGS OF FACT ..... 10-12

PROPOSED ORDERING PARAGRAPHS ..... 12-13

PROPOSED CONCLUSIONS OF LAW ..... 13-14

CONCLUSION..... 14

**Table of Authorities**

**Cases**

*Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983) ..... 5, 14

*Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super 278, 166 A.2d 96 (1960) ..... 5, 10

*Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976) ..... 7, 13

*Groch v. Unemployment Comp. Bd. of Review*, 472 A.2d 286 (Pa. Cmwlth. 1984) ..... 10

*Mid-Atlantic Power Supply Ass'n v Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) ..... 10

*Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001) ..... 5, 14

*Murphy v. Cmwlth., Dept. of Public Welfare, White Haven Center*, 85 Pa. Cmwlth 23, 480 A.2d 382 (1984) ..... 5, 10, 13

*Norfolk and Western Ry. v. PA Public Utility Commission*, 489 Pa. 109, 413 A.2d 1037 (1980) ..... 5, 10, 13

*Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990) ..... 4, 13

*Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987) ..... 10, 14

*Samuel J. Lansberry, Inc. v. PA Public Utility Commission*, 134 Pa. Cmwlth. 218, 221-22, 578 A. 2d 600, 602 (1990); *alloc. den.*, 602 A.2d 863 (1992) ..... 4, 13

*Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950) ..... 4, 13

*Vann v. Unemployment Comp. Bd. of Review*, 494 A.2d 1081 (Pa. 1985) ..... 10

***Statutes/Regulations***

2 Pa.C.S. § 704.....	5
66 Pa.C.S. § 101.....	1
66 Pa.C.S. § 102.....	6, 9, 13
66 Pa.C.S. § 332 .....	4, 13, 14
66 Pa.C.S. § 701.....	4, 13, 14
66 Pa.C.S. § 1501.....	6, 7, 8, 9, 13

## I. STATEMENT OF THE CASE

### Introduction

The above-captioned proceedings all concern Complainants who filed Formal Complaints opposing a project to replace a portion of the 72 Campbell-Middleton-North Hershey 69 kV Transmission Line (Transmission Line) in a similar manner as to how the Transmission Line is currently constructed, i.e., above-ground with wooden poles. Complainants are all homeowners in a neighborhood through which the Transmission Line runs, and the Transmission Line either passes through a Complainants' property or is located near a Complainants' property.

For the reasons set forth below, the Complaints should be dismissed and the relief requested by the Complainants denied. The Complainants produced only opinion testimony to support their allegations. The Complainants have failed to carry their burden of proof establishing that either Metropolitan Edison Company (Met-Ed) or Mid-Atlantic Interstate Transmission, LLC (MAIT), (collectively, Respondents) committed any violation of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 101 *et seq.* (Code) or any regulation, order or rule that the Commission has the authority to administer.

### History of the Proceeding

The Formal Complaints were all filed separately, initially against Met-Ed only and later, eleven (11) of the initial sixteen (16) Complainants filed Amended Complaints to include MAIT.<sup>1</sup>

Met-Ed filed an Answer and New Matter to each of the sixteen (16) Formal Complaints initially filed against it. In its Answer, Met-Ed admitted or denied the various averments in the Formal Complaint. In particular, Met-Ed's Answer and New Matter asserts that it is MAIT that owns the transmission line at issue, not Met-Ed. Therefore, Met-Ed avers that the Complainants have filed their Formal Complaint against the wrong entity, and the Formal Complaints should be dismissed.

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<sup>1</sup> Amended Formal Complaints were filed by Andrew S. Freiberg; Michael R. Florio; Tracy and Jill Troutman; Neal Walmer; Michael David Kramer; Rebecca Walizer; Stanley and Eileen Krasinski; Michael and Karen Fedash; Samantha Bryant; Michael and Margaret Marino; and Gregory L. Bair.

MAIT filed an Answer and New Matter to each of the eleven (11) Amended Formal Complaints filed against it. In its Answer, MAIT admitted or denied the various averments in the Amended Formal Complaints. Specifically, MAIT admits that it owns the Transmission Line, but denies that any of its actions related to the Transmission Line replacement project violate any statute, regulation or rule. Furthermore, MAIT averred that the Transmission Line was constructed thirty (30) years before the Complainants' housing development and the Complainants' assertions regarding speculative health, aesthetics and safety are without merit.

Met-Ed filed a Motion for Judgment on the Pleadings at docket numbers C-2021-3028211, C-2021-3028287, C-2021-3028278, C-2021-3028348, C-2021-3028416, and C-2021-3028464. Met-Ed averred that the owner of the transmission line is MAIT, and therefore, Complainants have filed against the wrong party.

On April 22, 2022, a *First Interim Order* was issued, denying Met-Ed's Motions for Judgment on the Pleadings to remove it as a named respondent.

Since April 22, 2022, eleven (11) Motions to Consolidate have been filed by Complainants at docket numbers C-2021-3028278, C-2021-3028464, C-2021-3028416, C-2021-3028211, C-2021-3028346, C-2021-3028286, C-2021-3028283, C-2021-3028414, C-2021-3028418, C-2021-3028302, and C-2021-3028186.

On May 20, 2022, Met-Ed and MAIT filed responses to the Motions to Consolidate; the Respondents did not object to the consolidation of the dockets for which consolidation was requested by respective Complainants. Additionally, Respondents requested that a Prehearing Conference be scheduled for the consolidated proceeding so that a litigation schedule, including filing of written testimony, may be considered.

On June 1, 2022, a Call-In Telephonic Prehearing Conference Notice was issued, setting July 26, 2022 as the date for a prehearing conference for all of the above captioned

proceedings. On June 6, 2022, a *Second Interim Order* was issued, consolidating the proceedings and providing further instructions for the July 26, 2022 prehearing conference.

On July 26, 2022, the Prehearing Conference convened as scheduled. Counsel for Respondents appeared and participated. The following Complainants appeared and participated: Rebecca Sue Walizer, Pingqi Dai, Neal Walmer, Debora N. Connell, Michael and Margaret Marino, Samantha Bryant, Michael David Kramer, Stanley and Eileen Krasinski, Andrew S. Feinberg, Michael Fedash, Tracy and Jill Troutman, and Gregory Bair. A proposed litigation schedule was discussed.

On August 1, 2022, a *Third Interim Order* was issued, setting forth the Litigation Schedule for the consolidated proceedings. The *Fourth Interim Order*, issued October 27, 2022, amended the litigation schedule. The *Briefing Order* was issued January 18, 2023.

## **II. SUMMARY OF ARGUMENT**

The Complainants object to the in-kind replacement of overhead facilities located within their residential subdivision, known as The Meadows. The Complainants offered only opinion testimony regarding their speculation that the replacement overhead facilities (1) will create physical and health concerns; (2) will create unsafe conditions; (3) will negatively impact the environment; and (4) will negatively impact property values. The Complainants request that the replacement facilities be placed underground throughout The Meadows. There is no allegation or evidence that the existing facilities (1) have created any physical and health concerns; (2) are unsafe; (3) are negatively impacting the environment; and (4) are negatively impacting property values.

Met-Ed's witness testified that the original facilities were constructed prior to the development of The Meadows pursuant to a valid recorded easement which specifically envisions the replacement project. MAIT's witness testified that the design and construction of the replacement facilities were consistent with best practices and in compliance with applicable codes and regulations covering the construction and operation of overhead transmission facilities.

### III. LEGAL BURDEN

#### 1. Burden of Proof

As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission regulation or order, or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701.

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa. C.S. § 332(a). The burden of proof for actions before the Commission is the “preponderance of the evidence” standard. *Suber v. Pennsylvania Com’n on Crime and Delinquency*, 885 A.2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc, denied*, 529 Pa. 654, 602 A.2d 863 (1992) (*Lansberry*). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. *See Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 48-49, 70 A.2d 854, 855 (1950).

The burden of proof comprises two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Initial Decision issued May 11, 2015; Final Order entered August 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party’s claim or affirmative defense. *Id.* It may shift between the parties during a hearing. If a complainant introduces sufficient evidence to establish the legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant’s evidence. *See id.* If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant’s burden of proof has not been satisfied and the burden of going forward with the

evidence shifts back to the complainant. The complainant then must provide some additional evidence favorable to the complainant's claim. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*), *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983) (*Burleson*).

Having produced sufficient evidence to establish the legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie, Burleson, see also Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993). It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of persuasion, the ultimate factfinder may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore*, citing *Suber*.

Finally, adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa. C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 217 (1983). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. Of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

## **2. Adequate, Efficient, Safe and Reasonable Electric Service**

A public utility has a duty to maintain adequate, efficient, safe, and reasonable service and facilities and to make changes, alterations, and substitutions that are necessary or

proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Section 1501 of the Code provides, in pertinent part, as follows:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.

66 Pa. C.S. § 1501.

As defined, in pertinent part, in Section 102 of the Code, 66 Pa.C.S. § 102:

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities...in the performance of their duties under this part to their patrons, employees, other public utilities, and the public....

Under the Code, upon finding that the service or facilities of a public utility are “unreasonable, unsafe, inadequate, insufficient” or otherwise in violation of the Code, the Commission shall “determine and prescribe ... the reasonable, safe, adequate, sufficient, service or facilities to be observed, furnished, enforced, or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public.” 66 Pa. C.S. § 1505.

Statutory service standards are also embodied in Commission Regulations. *See generally* 52 Pa. Code Chapter 57. This includes a utility’s obligation to maintain transmission

system reliability by, *inter alia*, complying with the National Electrical Safety Code. See 52 Pa. Code § 57.193.

Under these principles, the Complainants, as the party seeking relief, have the burden of proof. In this case, the Complainants have the burden of proving, by a preponderance of the evidence, that the Respondents are responsible or accountable for the problem described in their respective Complaint, i.e., the in-kind replacement of the overhead facilities located within the easement are unsafe and unreasonable in violation of Section 1501 of the Code. See, *Feinstein, supra*.

#### **IV. RECORD EVIDENCE**

##### Complainants' Evidence

In addition to Redacted Written Direct and Rebuttal Testimony<sup>2</sup> of the respective Complainants, the following Exhibits were admitted into evidence:

- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 4
- Exhibit 7 (only included with the Marinos' record)
- Exhibit 8 (only included with Dr. Freiberg's record)
- Exhibit 11 (only included with Ms. Connell's record)
- Exhibit 12

##### Respondent's Evidence

In addition to Written Direct and Rebuttal Testimony of both MAIT and Met-Ed, the following Exhibits were admitted into evidence:

##### **Met-Ed Exhibit Number - Description of Exhibit**

- 1: Recorded Easement for The Meadows Subdivision
- 2: Recorded Easement for certain Complainants

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<sup>2</sup> Pursuant to the *Briefing Order*, portions of the Written Direct and Rebuttal Testimony were stricken from the record.

## **MAIT Exhibit Number - Description of Exhibit**

- 1: Aerial view of the Transmission Lines, the phases and the progress.
- 2: Aerial view of the Transmission Line that crosses the land of certain Complainants and reflects the existing facilities and the proposed facilities.
- 3: CV for Kevin Irvine

## **V. ARGUMENT**

1. *Did the Complainants carry their burden of proof that the in-kind replacement of the overhead facilities violates Section 1501 of the Code?*

*Suggested answer: No.*

Both MAIT and Met-Ed are regulated public utility companies under 66 Pa.C.S. § 102. As a regulated public utility, MAIT and Met-Ed are subject to the provision of the Code, Commission regulations and orders. Absent proof by a preponderance of the evidence that the respective Respondent violated the provisions of 66 Pa.C.S. § 1501, the Commission has no authority to require any action by Respondents. *Met-Ed Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa.Cmwlth. 1984). *West Penn Power Company v. PA PUC*, Docket No. 1548 C. D. 2018 (Pa. Cmwlth. 2019).

The Transmission Line which originates in Met-Ed's service territory, crosses into PPL's service territory and terminates in Met-Ed's service territory. The existing line, which is hung on 52 feet tall poles, has 7 wires (6 conductors and a shield/ground wire). The Transmission Line provides power to several substations that feed various distribution lines. The easement for the Transmission Line was entered into between Met-Ed and Roy E. Nye and Nancy Louise Nye and was recorded on December 21, 1965. The easement specifically grants Met-Ed the uninterrupted right to place, erect, construct, install, use, operate, patrol, inspect, maintain, repair, reconstruct, renew, add to, or relocate the facilities (emphasis added). The portion of the Transmission Line between Sand Hill Road and Nye Road, crosses the land in The Meadows, and is approximately .37 miles. The Meadows was developed in 1995, approximately 30 years after the Transmission Line was constructed.

The Transmission Line is owned exclusively by MAIT, effective January 31, 2017. See, *Opinion and Order*, entered August 24, 2016, at Docket No. A-2015-2488903

(Transaction). As a result of the approved Transaction, Met-Ed no longer owns facilities serving a transmission function; Met-Ed continues to own and operate their distribution facilities and continues to provide retail electric service within its existing service territory. Met-Ed specifically continues to own the easement for the Transmission Line and is responsible for the vegetation maintenance of the right-of-way.

The Transmission Line is being rebuilt due to aged facilities and to meet mandatory obligations under Section 1501 of the Code<sup>3</sup> to provide safe, reasonable and adequate service to its customers. The in-kind replacement facilities will replace the existing nine (9) wood poles, averaging 52 feet, with seven (7) new wood poles, averaging 59 feet. The seven (7) existing overhead wires will be replaced with four (4) overhead wires (3 conductors and a shield/ground wire) (Project). The design of the Project is consistent with current industry best practices. The proposed location of structures will minimize material and construction costs which will result in fewer structures than the existing layout. The proposed wires were selected to minimize cost and meet capacity requirements. The Project will strengthen the electric system in Derry Township within Met-Ed's service territory and surrounding areas.

There is no dispute that Met-Ed holds a valid easement for the Transmission Line crossing The Meadows. ME Statement No. 1; Exhibit ME-1. The easement specifically provided for the construction and reconstruction of the Transmission Line.

MAIT and Met-Ed are obligated to provide safe and reliable service that is reasonably continuous and without unreasonable delay or interruptions. The importance of consistent and system-wide reliability is unquestioned.

There is no record evidence to support the Complainants' position that the Project violates the Code or Commission regulations. The Complainants' assertions, their personal opinions or perceptions do not constitute evidence. *Mid-Atlantic Power Supply Ass'n v Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000). Personal opinion, no matter how strongly held, does not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12

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<sup>3</sup> 66 Pa.C.S. § 1501.

(Pa. 1987). Even a *pro se* complainant must provide relevant and necessary information. *Groch v. Unemployment Comp. Bd. of Review*, 472 A.2d 286 (Pa. Cmwlth. 1984); *Vann v. Unemployment Comp. Bd. of Review*, 494 A.2d 1081 (Pa. 1985). Other than their collective opinion testimony, the Complainants presented no evidence. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. PA Public Utility Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 85 Pa. Cmwlth. 23, 480 A.2d 382 (1984).

The Complainants' evidence consists entirely of personal opinions, unsubstantiated concerns and speculation that the Project violates the Code or Commission regulations. The Complainants offered nothing more than personal opinions in seeking to establish their burden that the replacement facilities are unsafe or unreasonable and must be placed underground throughout The Meadows.

## **VI. PROPOSED FINDINGS OF FACT**

1. All the Complainants reside in the residential subdivisions known as The Meadows. MAIT Statement 1.

2. The Meadows Subdivision is located within PPL's service territory. MAIT Statement 1.

3. The 72 (Campbelltown-Middletown-North Hershey) 69 kV Transmission Line (Transmission Line) originates in the service territory of Metropolitan Edison Company (Met-Ed), crosses into PPL's service territory, and terminates in Met-Ed's service territory. MAIT Statement 1.

4. The Transmission Line crosses the land in the Meadows Subdivision between Sand Hill Road and Nye Road. MAIT Statement 1.

5. The Transmission Line in the Meadows Subdivision is approximately .37 miles. MAIT Statement 1; Met-Ed Statement 1; Met-Ed Exhibit 1.

6. The easement for the Transmission Line was entered into between Met-Ed and Roy E. Nye and Nancy Louise Nye and was recorded on December 21, 1965. Met-Ed Statement 1; Met-Ed Exhibit 1.

7. The Transmission Line was constructed well before The Meadows was developed. MAIT Statement 1.

8. All Complainants choose to move to The Meadows with actual knowledge of the Transmission Line and recorded easement. MAIT Statement 1R.

9. The Developer of The Meadows choose how the subdivision was subdivided. MAIT Statement 1R.

10. The existing line, which is hung on 52 feet tall poles, has 7 wires (6 conductors and a shield/ground wire). MAIT Statement 1.

11. The easement specifically grants Met-Ed the uninterrupted right to place, erect, construct, install, use, operate, patrol, inspect, maintain, repair, reconstruct, renew, add to, or relocate the facilities. Met-Ed Statement 1; Met-Ed Exhibit 1.

12. The Project will replace the existing nine (9) wood poles averaging 52 feet with seven (7) new wood poles averaging 59 feet. MAIT Statement 1.

13. The Project will replace the existing seven (7) overhead wires with four (4) overhead wires (3 conductors and a shield/ground wire). MAIT Statement 1.

14. The Project will strengthen the electric system in Derry Township within Met-Ed's service territory and surrounding areas. MAIT Statement 1.

15. The proposed location of structures minimizes material and construction costs which resulted in fewer structures than the existing layout. MAIT Statement 1

16. The proposed wires were selected to minimize cost and meet capacity requirements. This design is consistent with current industry best practices. MAIT Statement 1.

17. The design of the Project is consistent with current industry best practices. MAIT Statement 1.

18. The installed facilities for the Transmission Line existed before any houses were built in The Meadows. MAIT Statement 1R.

19. Certain transmission assets were transferred from Met-Ed to MAIT.

20. The Transmission Line is owned exclusively by MAIT, effective January 31, 2017. MAIT Statement 1.

21. Met-Ed continues to own and operate their distribution facilities and continues to provide retail electric service within its existing service territory. Met-Ed Statement 1.

22. Met-Ed specifically continues to own the easement for the Transmission Line. Met-Ed Statement 1.

23. The Transmission Line is being rebuilt due to aged facilities. MAIT Statement 1.

24. MAIT is replacing the overhead transmission facilities for the Transmission Line with like overhead facilities. MAIT Statement 1.

25. The Complainants did not raise any concerns regarding the Transmission Line prior to the announcement of the Project. MAIT Statement 1R.

## **VII. PROPOSED ORDERING PARAGRAPHS**

1. That the respective Complaints filed by Deborah Connell, Michael and Margaret Marino, Rebecca Walizer, Samantha Bryant, Michael Florio, Pingqi Dai, Michael Kramer, Stanley and Eileen Krasinski, Corey and Betty Rigberg, Andrew Freiberg, Neal Walmer, Karen Fedash, Tracy and Jill Troutman, Patricia Lane, and Gregory Bair against Metropolitan Edison Company at Docket Nos. C-2021-3028186, C-2021-3028211, C-2021-3028278, C-2021-3028283, C-2021-3028286, C-2021-3028302, C-2021-3028314, C-2021-3028416, C-2021-3028346, C-2021-3028348, C-2021-3028414, C-2021-3028416, C-2021-3028418, C-2021-3028464, C-2021-3028627 and C-2022-3030530 are denied.

2. That the respective Complaints filed by Michael and Margaret Marino, Rebecca Walizer, Samantha Bryant, Michael Florio, Michael Kramer, Stanley and Eileen Krasinski, Andrew Freiberg, Neal Walmer, Karen Fedash, Tracy and Jill Troutman, and Gregory Bair against Mid-Atlantic Interstate Transmission, LLC at Docket Nos. C-2021-3028211, C-2021-3028278, C-2021-3028283, C-2021-3028286, C-2021-3028314, C-2021-3028416, C-2021-3028346, C-2021-3028414, C-2021-3028416, C-2021-3028418, C-2021-3028464 and C-2022-3030530 are denied.

3. That the Secretary mark the formal complaint filed by the respective Complainants against Metropolitan Edison Company at Docket Nos. C-2021-3028186, C-2021-3028211, C-2021-3028278, C-2021-3028283, C-2021-3028286, C-2021-3028302, C-2021-3028314, C-2021-3028416, C-2021-3028346, C-2021-3028348, C-2021-3028414, C-2021-3028416, C-2021-3028418, C-2021-3028464, C-2021-3028627 and C-2022-3030530 closed.

4. That the Secretary mark the formal complaint filed by the respective Complainants against Mid-Atlantic Interstate Transmission, LLC at Docket Nos. C-2021-3028211, C-2021-3028278, C-2021-3028283, C-2021-3028286, C-2021-3028314, C-2021-3028416, C-2021-3028346, C-2021-3028414, C-2021-3028416, C-2021-3028418, C-2021-3028464 and C-2022-3030530 closed.

## VIII. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. §§ 102, 701, 1501.

2. To satisfy their burden of proof, the Complainants must demonstrate that the Respondents violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 332(a); *Patterson v. Bell Tel. Co. of PA*, 72 Pa. PUC 196 (1990); and *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

3. The burden of proof must be shown by a preponderance of the evidence, which is more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 134 Pa.Cmwlth. 218; 221-222, 578 A.2d 600; 602 (1990), app. denied, 529 Pa. 654, 602 A.2d 863 (1992); and *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

4. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence and be more than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

5. Before Complainants can succeed in their complaint, Respondents' actions must violate the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S.A. § 701.

6. The Commission has the responsibility to ensure the public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities. 66 Pa.C.S.A. § 1501.

7. Upon the presentation by the Complainants of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the Complainants shifts to the Respondents. If the

evidence presented by the Respondents is of co-equal weight, the Complainants have not satisfied the burden of proof. The Complainants now have to provide some additional evidence to rebut the evidence of the Respondents. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

9. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

10. Assertions, personal opinions or perceptions do not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

11. Complainants bears the burden of proving that MAIT's Project is a violation of some applicable statute, regulation, or order of the Commission.

12. The Complainants have failed to carry their burden of proof which establishes that either MAIT violated the Public Utility Code or a regulation or order of the Commission in proposing to replace a portion of the Campbell-Middleton-North Hershey 69 kV Transmission Line in a similar manner to how the Transmission Line is currently constructed. 66 Pa.C.S.A. §§ 701, 332.

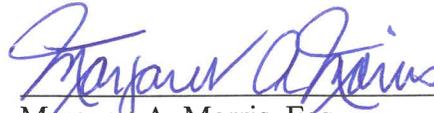
## **IX. CONCLUSION**

There is no record evidence to support a finding that the actions of either Respondent violated the Code, regulations, order that the Commission is authorized to administer. The request that MAIT be ordered to place its facilities underground through The Meadows should be denied.

**WHEREFORE**, for the foregoing reasons, Metropolitan Edison Company and Mid-Atlantic Interstate Transmission, LLC respectfully requests that this Honorable Court dismiss with prejudice the Formal Complaints in this consolidated proceeding in their entirety.

Respectfully submitted,

Date: February 17, 2023



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