

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held February 9, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
Stephen M. DeFrank, Vice Chairman  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Thomas & Elizabeth Bierkamp	:	C-2019-3015097
Jeffrey & Gretchen Moyer	:	C-2019-3015098
Jeffrey & Gretchen Moyer	:	C-2019-3015099
Clarence D. Geist, Jr.	:	C-2019-3015100
	:	
v.	:	
	:	
Metropolitan Edison Company	:	

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Administrative Law Judge (ALJ) John M. Coogan, issued on December 19, 2022, in the above-captioned proceeding. Exceptions have not been filed. However, we have exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h). For the reasons stated below, we shall modify the Initial Decision, consistent with this Opinion and Order.

## History of the Proceeding

On December 17, 2019, Thomas and Elizabeth Bierkamp filed a Formal Complaint (Bierkamp Complaint)<sup>1</sup> with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Met-Ed or Company), at Docket No. C-2019-3015097. In the Bierkamp Complaint, they averred that they are having a reliability, safety, or quality problem with their utility service. The Bierkamps alleged they have had approximately fourteen (14) power outages in the last two years and have had ongoing problems for over thirty (30) years. As requested relief, the Bierkamps state they would like updated equipment, installation of more switches, and extensive tree trimming. Bierkamp Complaint at 1-3.

On December 23, 2019, Jeffrey and Gretchen Moyer filed a Formal Complaint (Moyer Complaint 1)<sup>2</sup> with the Commission against Met-Ed, at Docket No. C-2019-3015098. The Complaint at this docket concerned service to the property at 1678 Route 143, Lenhartsville, Pennsylvania. In their Formal Complaint, the Moyers averred that they are having a reliability, safety, or quality problem with their utility service. As requested relief, the Moyers state they would like updated equipment, installation of more switches, and extensive tree trimming. The Moyers alleged outages have been a chronic problem for over thirty (30) years, and everyone, or almost everyone, in their area owns generators. Moyer Complaint 1 at 1-3.

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<sup>1</sup> Although the Initial Decision notes that the Bierkamp Complaint was filed on December 23, 2019, the Commission's case management system indicates that the Commission received the Complaint on December 17, 2019.

<sup>2</sup> Although the Initial Decision notes that the Moyer Complaint 1 was filed on December 23, 2019, the Commission's case management system indicates that the Commission received the Complaint on December 17, 2019.

On December 23, 2019, the Moyers filed another Formal Complaint (Moyer Complaint 2)<sup>3</sup> (collectively, the Moyer Complaints) with the Commission against Met-Ed, at Docket No. C-2019-3015099. This Complaint concerned service to the property at 244 Sousley Road, Lenhartsville, Pennsylvania. In the Moyer Complaint 2, the Moyers averred that they are having a reliability, safety, or quality problem with their utility service. The Moyers alleged there have been numerous outages, i.e., 14 in 24 months. As requested relief, the Moyers state they would like updated equipment, installation of more switches, and extensive tree trimming. Moyer Complaint 2 at 1-3.

On December 23, 2019, Clarence D. Geist, Jr. filed a Formal Complaint (Geist Complaint)<sup>4</sup> with the Commission against Met-Ed, at Docket No. C-2019-3015100. In his Complaint, Mr. Geist averred that he is having a reliability, safety, or quality problem with his utility service. Mr. Geist alleged chronic outages have been an ongoing problem for over thirty (30) years, and everyone in the area, or almost everyone, owns generators. Mr. Geist, who is seventy-eight (78) years old, states that his wife must use a continuous positive airway pressure CPAP (sleep apnea machine), and many nights he has had to go out and hook up a generator to ensure the CPAP machine is operable. As requested relief, Mr. Geist stated he would like updated equipment, installation of more switches, and extensive tree trimming. Geist Complaint at 1-3.

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<sup>3</sup> Although the Initial Decision notes that the Moyer Complaint 2 was filed on December 23, 2019, the Commission's case management system indicates that the Commission received the Complaint on December 17, 2019.

<sup>4</sup> Although the Initial Decision notes that the Geist Complaint was filed on December 23, 2019, the Commission's case management system indicates that the Commission received the Complaint on December 17, 2019.

On December 26, 2019, Gregory Dissinger filed a Formal Complaint (Dissinger Complaint)<sup>5</sup> with the Commission against Met-Ed, at Docket No. C-2019-3015145. In his Complaint, Mr. Dissinger averred that he is having a reliability, safety, or quality problem with his utility service. Mr. Dissinger alleged he loses electricity too often and, as relief, Mr. Dissinger requests that dead trees be cut down. Dissinger Complaint at 1-3.

All of the Complainants alleged that they are having a reliability, safety, or quality problem with the electric distribution service provided by Met-Ed. All alleged numerous service outages occurring over the last 30 years. As relief, the Complainants requested that Met-Ed update equipment, install more switches, and perform extensive tree trimming.

On January 13, 2020, Met-Ed filed separate Answers and New Matters to the Bierkamps' Complaint, both of the Moyers' Complaints, and the Geist Complaint. On January 15, 2020, Met-Ed filed an Answer and New Matter to the Dissinger Complaint. On January 27, 2020, the Moyers filed separate replies to Met-Ed's New Matters at Docket Nos. C-2019-3015098 and C-2019-3015099. The Bierkamps, Mr. Geist, and Mr. Dissinger did not file replies to Met-Ed's New Matter.

On January 14, 2020, February 4, 2020, February 13, 2020, and February 18, 2020, Chief Administrative Law Judge Charles E. Rainey, Jr. issued interim orders directing the Parties at C-2019-3015097 (the Moyers and Met-Ed), C-2019-3015098 and C-2019-3015099 (the Bierkamps and Met-Ed), C-2019-3015100 (Mr. Geist and Met-Ed), and C-2019-3015145 (Mr. Dissinger and Met-Ed), respectively, to attempt mediation.

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<sup>5</sup> Although the Initial Decision notes that the Dissinger Complaint was filed on December 26, 2019, the Commission's case management system indicates that the Commission received the Complaint on December 17, 2019.

On January 28, 2022, the Commission issued an initial telephonic prehearing conference notice at C-2019-3015097, C-2019-3015098 and C-2019-3015099, C-2019-3015100, and C-2019-3015145, setting a call-in telephonic prehearing conference for March 16, 2022. On February 8, 2022, Administrative Law Judge Elizabeth H. Barnes (ALJ Barnes) issued a prehearing conference and consolidation order, consolidating the proceedings at Docket Nos. C-2019-3015097, C-2019-3015098 and C-2019-3015099, C-2019-3015100 and C-2019-3015145, and providing further instructions for the prehearing conference on March 16, 2022.

On March 16, 2022, a prehearing conference for the consolidated proceedings was held as scheduled, with ALJ Barnes presiding. All of the Parties participated in the prehearing conference except Mr. Dissinger.

On March 16, 2022, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter on May 3, 2022.

On May 2, 2022, the Commission issued a telephonic hearing cancellation/reschedule notice setting a rescheduled formal call-in telephonic hearing for this matter for June 21, 2022.

On May 4, 2022, Met-Ed filed a Certificate of Satisfaction to Docket No. C-2019-3015145 (Dissinger Complaint). No objection was received by the Commission, and the docket was marked as closed.

On June 13, 2022, the Commission issued a corrected hearing notice/judge change notice, assigning ALJ Coogan as the presiding officer for the June 21, 2022 hearing.

On June 20, 2022, the Parties informally requested a continuance, without objection, and the ALJ granted the request for continuance and canceled the June 21, 2022 hearing via email dated June 21, 2022. A rescheduled hearing notice was served on June 24, 2022, establishing an initial telephonic hearing in this matter for September 14, 2022. On June 28, 2022, the Commission served an order formally granting the continuance request.

The hearing was held as scheduled on September 14, 2022. Margaret Morris, Esquire attended on behalf of Met-Ed, along with two witnesses for Met-Ed: Chad Summy, Reliability Engineer for Met-Ed; and Richard Lamoreaux, Forestry Specialist for Met-Ed. Thomas and Elizabeth Bierkamp, Gretchen Moyer, and Clarence Geist appeared on behalf of themselves. Met-Ed submitted fifteen exhibits that were admitted into the record. The Complainants did not submit any exhibits.

The record in this case closed on October 5, 2022, upon the filing of the hearing transcript.

The Commission issued the ALJ's Initial Decision on December 19, 2022, which dismissed all of the Complaints of the Complainants for failure to satisfy their burden of demonstrating that Met Ed violated the Public Utility Code (Code), a Commission Order or Regulation or a Commission-approved tariff with respect to the service provided to them regarding power outages at their service addresses. I.D. at 1, 16, 19.

## Discussion

### Legal Standards

As the proponent of a rule or order, the Complainants in this proceeding bear the burden of proof pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainants must show that Met-Ed is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainants' evidence must be more convincing, by even the smallest amount, than that presented by Met-Ed. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982). 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).

Upon the presentation by the Complainants of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the customer shifts to Met-Ed. If the evidence presented by Met-Ed is of co-equal value or "weight," the burden of proof has not been satisfied. The Complainants now have to provide some additional evidence to rebut that of Met-Ed. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence 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. PUC*, 768 A.2d 1217 (Pa. Cmwlt. 2001).

The Code requires each public utility to comply with the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa. C.S. § 1501. The statutory definition of “service” is to be broadly construed. *Kim Betchy v. West Penn Power Co.*, Docket No. C-2018-3000257 (Opinion and Order entered Oct. 8, 2020) (citing *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlt. 1995)). As defined in the Code:

“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, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . . .

66 Pa. C.S. § 102.

A Section 1501 violation regarding unreasonable service outages is fact specific as to the number of outages, their causes, and a company’s corrective actions. *Barry v. Metro. Edison Co.*, Docket No. C-2018-3005410 (Opinion and Order entered Aug. 12, 2019).

The Commission does not automatically consider an outage from an off right-of-way tree to exonerate the utility from fault. *Id.* An electric distribution company

shall strive to prevent interruptions of electric service and, when interruptions occur, restore service within the shortest reasonable time. 52 Pa. Code § 57.194(d).

A utility's Commission-approved tariff (list of services, rules for service and rates for service) has the force of law and is binding on the utility and its customers. *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. PUC*, 594 A.2d 816 (Pa. Cmwlth. 1991), *alloc. denied*, 605 A.2d 335 (Pa. 1992), 66 Pa. C.S. § 316.

### **ALJ's Initial Decision**

ALJ Coogan made fifty Findings of Fact and reached fifteen Conclusions of Law. I.D. at 5-9, 16-19. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

In his Initial Decision, ALJ Coogan dismissed the Complaints for failure of the Complainants to carry their burden of proving, by a preponderance of the evidence, that Met-Ed provided unreasonable service in violation of the Code, Commission Regulations or a Commission Order. I.D. at 1, 16, 19.

In this proceeding, the Complainants have alleged that Met-Ed violated Section 1501 of the Code regarding reasonable, safe and quality service. 66 Pa. C.S. § 1501. Therefore, the Complainants have the burden of proof in this proceeding.

The ALJ noted that when provided with an opportunity to testify at the September 14, 2022 hearing, Mrs. Bierkamp stated that their Complaint was filed

because of the frequent and sometimes long power outages that she alleged they experience. I.D. at 12; Tr. 34. However, when asked if she wished to elaborate on the reasons for the Complaint, she stated that she would like to defer to Mrs. Moyer. *Id.*; Tr. 35. Met-Ed stated it did not object to the Bierkamps deferring to Mrs. Moyer. *Id.*; Tr. 36.

ALJ Coogan further stated that Mrs. Moyer testified as to incidents with specifically her electric service in August 2020 and February 2022, but otherwise stated that Met-Ed's own records of forty-six (46) outages in less than four years demonstrate their service is unreliable. *Id.*; Tr. 38, 40, 47. Specifically, Mrs. Moyer asserted that Met-Ed's records show nine incidents identified as "Equipment Failure" or "Patrolled Line – Permanent Condition Identified." *Id.*; Tr. 48. Mrs. Moyer alleges that even nine power outages in four years is too much. *Id.*; Tr. 48. Regarding other incidents caused by trees, Mrs. Moyer avers the trees should be cut down, and switches and equipment can be updated. *Id.*; Tr. 48-49. Mrs. Moyer testified that it is necessary to own a generator because of the power outages. *Id.*; Tr. 49. Mr. Geist testified that he has experienced nine incidents with his power in 2022. *Id.*; Tr. 52-53. Mr. Geist suggested that any problems with service related to service poles in marshland could be solved by moving the poles to dry land. *Id.*; Tr. 53.

Met-Ed submitted documentation of forty-six (46) power outages at the Complainants' service addresses from January 2018 through September 2022. *Id.*; Met-Ed Exhibits 3, 4, 10, 11, 13, 14, 15; Tr. 70-71. Of the forty-six (46) outages, four were caused by line or Company equipment failure, four were caused by unknown reasons, two were caused by right-of-way trees, thirty-five (35) were caused by trees outside of the right-of-way, and one was a forced outage. *Id.*; Met-Ed Exhibit 3, 4, 10, 11, 13, 14, 15; Tr. 71-73.

Met-Ed contends that the improvements it has made to the Complainants' service may have prevented or minimized the service interruptions experienced by

Complainants. *Id.* at 12; Tr. 82-83. However, despite Met-Ed's efforts, the topography of the circuit, i.e., the wetlands, hampers the crew's ability to access and remove vegetation. *Id.* at 12; Tr. 114. Additionally, Met-Ed avers the Company has limited ability to remove outside of the right-of-way vegetation, and the majority of outages occurred during some kind of inclement weather. *Id.* at 12; Tr. 73-74. Nonetheless, Met-Ed avers cycle maintenance is currently in progress for the portion of the Circuit near the Complainants' residences. *Id.* at 12; Tr. 102-103, 107-108.

ALJ Coogan noted that recently, in a different proceeding, the Commission found that fourteen outages and eight reclosure events over approximately three and a half years did not constitute unreasonable service. *Zampatti v. West Penn Power Co.*, Docket No. C-2020-3021157 (Opinion and Order entered Apr. 25, 2022). The Commission did not cite or set a rule about a quantity of outages that constitute inadequate and unreasonable service but did emphasize that West Penn Power took steps to remedy the service concerns and that those steps did lead to fewer outages. *I.D.* at 13; *Id.* at 11-12.

The ALJ noted that here, the Complainants experienced forty-six (46) outages over approximately four years. Met-Ed's witness described steps it has taken to remedy the outages to the Complainants' services, but it is not clear that those steps are leading to a decrease in outages. Specifically, seven of the outages were in 2018, eleven were in 2019, eight were in 2020, sixteen were in 2021, and eight in 2022 as of the hearing on September 14, 2022. *Id.*; Met-Ed Exhibits 3, 4, 10, 11, 13, 14, 15; Tr. 71.

Furthermore, the ALJ noted that nonetheless, although forty-six (46) outages over approximately four years may on its face appear unreasonable, the ALJ found that Met-Ed successfully rebutted this evidence and therefore the Complainants have not met their burden of proof that Met-Ed's service is unreasonable and inadequate.

First, the vast majority of outages, 35 out of 46, were caused by things not within Met-Ed's control, i.e., outside of the right-of-way trees. Although the Commission does not automatically consider an outage from a tree located outside of the right-of-way to exonerate the utility from fault, the Complainants did not establish in the record that Met-Ed did not provide reasonable or adequate service in relation to managing or attempting to manage the out of the right-of-way trees that caused outages. Instead, the record does indicate Met-Ed does attempt to take action to manage off right-of-way trees, e.g., Met-Ed Exhibit 8. It is also unclear what caused the outages labelled "Patrolled Line-No Permanent Condition Identified." The ALJ stated that therefore, it is not clear that "Patrolled Line-No Permanent Condition Identified" outages were within Met-Ed's control to the same extent as equipment failure or on right-of-way trees. *Id*; Met-Ed Exhibits 3, 4. Rather, only seven of the forty-six (46) outages are clearly within Met-Ed's control, i.e., were caused by equipment failure<sup>6</sup> or trees on Met-Ed's right-of-way. I.D. at 13-14.

The ALJ also found that even if fault is assigned to Met-Ed for the seven outages that are arguably within Met-Ed's control, Met-Ed's Electric Service Tariff does not guarantee a continuous, uninterrupted, or regular supply of electric service. I.D. at 14; Met-Ed Exhibit 12. Met-Ed may, without liability, interrupt or limit the supply of electric service for the purpose of making repairs, changes, or improvements in any part of its system for the general good of the service or the safety of the public or for the purpose of preventing or limiting any actual or threatened instability or disturbance of the system. *Id*. Additionally, Section 1501 of the Code requires reasonable service, not perfect service. 66 Pa. C.S. § 1501; *Elkin*. It is therefore not clear that these seven outages alone constitute unreasonable and inadequate service. Moreover, Met-Ed is also not liable "for any damages due to accident, strike, storm . . .

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<sup>6</sup> The record indicates the one forced outage was also caused by equipment failure. Met-Ed Exhibits 3, 4.

or any other cause” beyond Met-Ed’s control. *Id.*; Met-Ed Exhibit 12. Of the seven outages most clearly within Met-Ed’s control, only two occurred when there was not a notable weather event, i.e., when the weather was described as fair. *Id.*; Met-Ed Exhibits 3, 4, 10, 11, 13, 14, 15.

The ALJ noted that lastly, Met-Ed testified that it maintains Biennial Inspection, Maintenance, Repair and Replacement Plans (Biennial I&M Plans) with the Commission, which reflect its standards as regards inspecting, repairing, and/or replacing equipment and vegetation management. I.D. at 14; Tr. 78-81; 103105. Met-Ed testified that it has made equipment modifications to the Complainants’ tap-in area and is currently undertaking vegetation management in an attempt to mitigate the number of outages experienced by the Complainants. *Id.*; Tr. 82, 102-103, 107-108. Therefore, although the number of outages experienced by the Complainants over the past several years is not clearly trending downwards, Met-Ed does have established Biennial I&M Plans and it appears that Met-Ed is making good faith efforts to ameliorate the outages for the Complainants’ tap-in area of the Circuit in particular. I.D. at 14.

In addition, according to the ALJ, Mrs. Moyer also provided specific testimony regarding outages on February 18, 2022, and in August 2020 as reasons for the Moyers’ Complaints. I.D. at 15; Tr. 38-40. Regarding the February 18, 2022 outage, Mrs. Moyer testified that fire companies arrived because a tree fell on a wire and started a fire. *Id.*; Tr. 38.<sup>7</sup> However, Mrs. Moyer alleged that Met-Ed did not respond for over ten (10) hours. *Id.*; Tr. 39. In response to Mrs. Moyer’s testimony, Met-Ed testified that the

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<sup>7</sup> During Mrs. Moyer’s testimony, counsel for Met-Ed objected to Mrs. Moyer’s reference to out of court statements as hearsay. I.D. at 15; Tr. 38-39. Although administrative agencies in Pennsylvania can rely on hearsay for a finding of fact if there is no objection and the hearsay is corroborated (*Walker v. Unemployment Comp. Bd. of Rev.*, 367 A.2d 366 (Pa. Cmwlth. 1976)), this decision neither relies on nor provides any finding of fact regarding any out of court statements that were objected to as hearsay.

first report of interruption of service was 7:08 a.m., and field work was completed by 12:51 p.m. *Id.*; Met-Ed Exhibit 11; Tr. 85.<sup>8</sup> Met-Ed also highlighted that the weather that day was rainy with high winds and the tree causing the issue was an off right-of-way tree. *Id.*; Met-Ed Exhibit 11; Tr. 86. Regarding this specific outage, the ALJ did not find that there is substantial evidence that Met-Ed provided such a delayed response so that inadequate or unreasonable service was rendered, or that Met-Ed did not restore service within the shortest reasonable time. It is also noteworthy that the outage was caused by an outside of the right-of-way tree during a day with rain and high winds. According to the ALJ, as noted above, utilities must provide reasonable service, not perfect service. *I.D.* at 15.

Concerning the August 2020 outages, the ALJ found the record shows that there were outages on August 2 and August 4, 2022. *I.D.* at 15; Met-Ed Exhibits 3, 4, 10. Mrs. Moyer testified that she lost \$6,000 in household appliances because of the outages. *Id.*; Tr. 40.<sup>9</sup> However, the record shows that the damage was caused by trees during rain

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<sup>8</sup> Mrs. Moyer objected to Met-Ed's witnesses recounting of the times at which Met-Ed responded to the outage on February 18, 2022. *I.D.* at 15; Tr. 87. Mrs. Moyer's objections were noted, but Mrs. Moyer's objections were based on her reference to text messages, which were not introduced as evidence into the record. *Id.*; Tr. 87-90. The telephonic hearing notices and prehearing order issued in this proceeding provided instructions on how to submit proposed exhibits ahead of the evidentiary hearing. The Moyers did not circulate any proposed exhibits in this proceeding ahead of the evidentiary hearing. *Id.*

<sup>9</sup> Met-Ed objected to Mrs. Moyer's testimony regarding losses associated with the August 2020 outages because it was not specifically included in the Moyers' Complaints and included an allegation regarding damages. *I.D.* at 15; Tr. 41-43. Because the Complaints regarded recurring outages experienced by the Complainants and Mrs. Moyer did not state during the hearing that she was seeking recovery of damages, Mrs. Moyer was allowed to continue with her testimony. *Id.*; Tr. 44-46. Additionally, Met-Ed was informed they could request further hearings, if they felt it was necessary to further respond to Complainants' testimony. *Id.* Met-Ed did not request any further hearings after the September 14, 2022 evidentiary hearing.

with high winds. *Id.*; Met-Ed Exhibits 3, 4, 10.<sup>10</sup> As explained above, Met-Ed is not liable “for any damages due to accident, strike, storm . . . or any other cause” beyond Met-Ed’s control. I.D. at 16; Met-Ed Exhibit 12. There is not substantial evidence to the contrary that events in August 2020 were so within Met-Ed’s control that Met-Ed provided inadequate or unreasonable service. Therefore, the ALJ concluded that the Moyers’ Complaints are not sustained as regards the August 2020 outages. I.D. at 16.

As relief, the Complainants all requested that Met-Ed update equipment, install more switches, and perform extensive tree trimming. The ALJ determined that the record of this proceeding does show that Met-Ed has taken various steps regarding updating equipment and vegetation management to improve service to the Complainants. The ALJ further determined that although the annual number of outages does not appear to be clearly decreasing, for the reasons explained above, the record also does not contain substantial evidence that Met-Ed is providing unreasonable and inadequate service and therefore violating the Code, a Commission Order or Regulation or a Commission-approved tariff as it relates to the Complainants’ service. Accordingly, the ALJ dismissed all of the Complainants’ Complaints.

## **Disposition**

We advise the Parties that, as a preliminary matter, any issue that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. We are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741

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<sup>10</sup> The record shows that the August 2, 2020 outage was caused by off right-of-way trees. I.D. at 16; Met-Ed Exhibit 4. However, it is not clear from the record that the August 4, 2020 outage was caused by a tree out of the right-of-way. *Id.* Specifically, page 1 of 2 of Met-Ed Exhibit 10 indicates that the outage was caused by an on right-of-way tree, while page 2 of 2 of Met-Ed Exhibit 10 and a Power-On Order for August 4, 2022 in Met-Ed Exhibit 4 indicate that the outage was caused by an out of right-of-way tree. *Id.*

(Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

On exercise of our independent review of the Parties' positions and the record evidence, we shall modify ALJ Coogan's Initial Decision by referring this matter to the Commission's Bureau of Technical Utility Services – Reliability Section (TUS Reliability) for further review and the issuance of a report consistent with this Opinion and Order.

While we agree with the ALJ that the Complainants failed to support their Complaints by substantial evidence of record and thus have not satisfied their burden of proof, we are concerned by the number of outages the Complainants have experienced over the last several years.

We note that at the evidentiary hearing held on September 14, 2022, Met-Ed submitted documentation of forty-six (46) power outages at the Complainants' service addresses from January 2018 through September 2022. Of the forty-six (46) outages, four were caused by line or Company equipment failure, four were caused by unknown reasons, two were caused by right-of-way trees, thirty-five (35) were caused by outside of the right-of-way trees, and one was a forced outage.

Met-Ed testified that the improvements it has made to the Complainants' service may have prevented or minimized the service interruptions experienced by the Complainants. Met-Ed explained that the topography of the circuit, i.e., the wetlands, hampers the crew's ability to access and remove vegetation. Tr. 82-83, 114. Additionally, Met-Ed averred that the Company has limited ability to remove off right-of-way vegetation, and the majority of outages occurred during some kind of inclement weather. Tr. 73-74.

Met-Ed stated that cycle maintenance is currently in progress for the portion of the Circuit near the Complainants' residences. Although Met-Ed described steps it has taken to remedy the outages, as noted by the presiding ALJ, it is not clear that those steps are leading to a decrease in outages. Specifically, seven of the outages were in 2018, eleven were in 2019, eight were in 2020, sixteen were in 2021, and eight in 2022 as of the hearing on September 14, 2022. Met-Ed Exhibits 3, 4, 10, 11, 13, 14, 15; Tr. 71.

Even though we agree that the Complainants were unable to prove, with the facts entered into this record, that Met-Ed violated any rule and that the Complaints must be denied, the sheer number of outages occurring within a 5-year period is troubling. In an effort to facilitate a solution for these Complainants, we will refer this matter to TUS Reliability for a review of the outages, including those caused by the off right-of-way trees. As noted by the ALJ, allegations regarding outages caused by off right-of-way trees are not automatically rejected by the Commission. In other words, the utility is not exonerated of fault by the fact that the trees are located out of the right-of-way.

We ask that TUS Reliability report back with any findings or recommendations for improving the electric distribution service rendered to the Complainants.

### **Conclusion**

Upon review of the record, we shall modify the ALJ's Initial Decision and refer this matter to TUS Reliability for further action, as may be warranted, consistent with this Opinion and Order; **THEREFORE,**

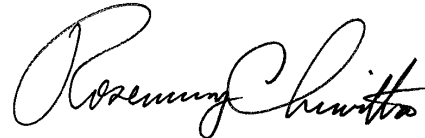
**IT IS ORDERED:**

1. That the Initial Decision of Administrative Law Judge John M. Coogan, issued on December 19, 2022, is modified, consistent with this Opinion and Order.
2. That the Formal Complaint filed by Thomas and Elizabeth Bierkamp on December 17, 2019, at Docket No. C-2019-3015097, is dismissed.
3. That the Formal Complaints filed by Jeffrey and Gretchen Moyer on December 17, 2019, at Docket Nos. C-2019-3015098 and C-2019-3015099, are dismissed.
4. That the Formal Complaint filed by Clarence D. Geist on December 17, 2019, at Docket No. C-2019-3015100, is dismissed.
5. That this matter is referred to the Commission's Bureau of Technical Utility Services – Reliability Section for further review, as may be warranted, consistent with this Opinion and Order.
6. That the Commission's Bureau of Technical Utility Services – Reliability Section's further review will culminate in the issuance of a report at this consolidated docket within nine (9) months from the entry of this Opinion and Order.
7. That the Commission shall serve a copy of the Technical Utility Services – Reliability Section's report on Thomas and Elizabeth Bierkamp, Jeffrey and Gretchen Moyer and Clarence D. Geist.

8. That the Commission's Secretary's Bureau provide a copy of this Opinion and Order to the Commission's Bureau of Technical Utility Services – Reliability Section.

9. That upon the issuance of the Technical Utility Services – Reliability Section's Report in accordance with Ordering Paragraphs 6 and 7, the proceedings at these dockets shall be closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: February 9, 2023

ORDER ENTERED: March 15, 2023