

March 20, 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.  
Reply Brief of Met-Ed and MAIT**

Dear Secretary Chiavetta:

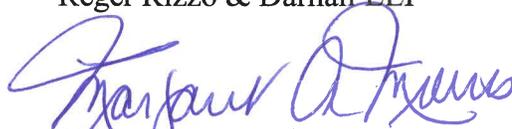
Attached for filing is the Reply Brief of Metropolitan Edison Company and Mid-Atlantic Interstate Transmission, LLC (collectively Respondents), in the above referenced consolidated proceeding.

A copy of the Reply 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.  
Reply 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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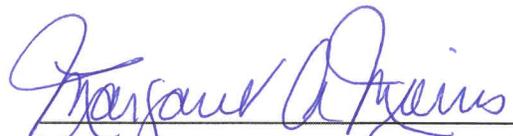
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Dated: March 20, 2023

  
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

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

Date: March 20, 2023

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## INTRODUCTION

Pursuant to the *Briefing Order* issued January 18, 2023, Metropolitan Edison Company (Met-Ed) and Mid-Atlantic Interstate Transmission, LLC (MAIT), (collectively, Respondents) and the respective Complainants<sup>1</sup> who timely filed identical main briefs (collectively, Complainants' Brief) in this consolidated complaint proceeding. The Complainants' Brief completely ignores their burden of proof and is nothing more than a collection of misconceptions, distortions of the record and irrelevant arguments. As more fully discussed below, the Complainants improperly offer facts and conclusions unsupported by the record evidence and draw unreasonable inferences that have no basis in fact or law. The respective Formal Complaints should be dismissed in their entirety.

### I. SUMMARY OF ARGUMENT

The Complainants' Brief completely ignores their burden of proof and is nothing more than a continuation of their attempts to fabricate a violation of Section 1501 of the Pennsylvania Public Utility Code (Code)<sup>2</sup> or Commission regulations. No complainant, prior to the replacement of the existing overhead facilities (Project), ever raised any of the "concerns" now vehemently argued. The original facilities were constructed prior to the development of The Meadows pursuant to a valid recorded easement which specifically envisions the Project. As more fully discussed below, the Complainants improperly offer facts and conclusions unsupported by the record evidence and draws unreasonable inferences that have no basis in fact or law. Their respective Complaints should be dismissed in their entirety.

### II. ARGUMENT

1. *The Complainants have completely ignored their legal burden required to sustain their Complaints.*

The Complainants ignore that as the moving party, they, not the Respondents, have the burden of proof in this consolidated proceeding. In fact, Complainants' Brief does not

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<sup>1</sup> Rebecca Sue Walizer, Pingqi Dai, Michael and Margaret Marino, Samantha Bryant, Michael David Kramer, Stanley and Eileen Krasinski, Andrew S. Freiberg, Michael Florio, Karen Fedash, Tracy and Jill Troutman, and Gregory Bair.

<sup>2</sup> 66 Pa. Code § 1501.

even mention the legal burden to sustain their Complaint. Once the Respondents offered their respective evidence, the Complainants were required to provide additional evidence to refute the Respondents' evidence. The Complainant did not offer any evidence to refute the Respondents' evidence. The Complainants simply ignore MAIT's legal authority under the recorded easement for the Project and offer speculation and personal opinions in support of their position that "underground transmission lines is [sic] the safest path forward" and that the Project poses "health and safety risks to the residents of The Meadows." Complainants Brief at 1-2.

As set forth in Respondents' Brief at 4-5, the Complainants must establish by a preponderance of the evidence that the Project violates Section 1501 of the Code. The Complainants' assertions, personal opinions or perceptions, no matter how strongly held, do not constitute record evidence, and cannot support a finding of fact that the Project is unsafe or unreasonable and a violation of the Code. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). The Complainants' position that "[their] definition of safety and risk of danger means that there are no casualties, no injuries, no property damage and no accidents resulting from these overhead lines and poles" (Complainant Direct Testimony, Lines 71-74), improperly shift the burden to the Respondents.

Section 1501 of the Code, 66 Pa.C.S. § 1501, mandates that the Respondents provide reasonable and adequate service, not perfect service. *Elkin v. Bell Telephone Company*, 372 A.2d 1203 (Pa.Super. 1977). In determining whether Respondents have violated the provisions of 66 Pa.C.S. § 1501, it must be understood that what is required is adequate, efficient, safe, and reasonable service and facilities, not "perfect service." *Manuel A. Biason v. Metropolitan Edison Company*, PUC Docket No. C-00004450 (Opinion and Order entered December 19, 2001). The Code does not mandate perfect service, nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service. *Re Metropolitan Edison Company*, 80 Pa. PUC 662 (November 19, 1993).

2. *The Complainants completely ignore the Respondents legal rights granted under the recorded easement.*

The Complainants opine that because the land use has changes since the easement was recorded and the construction of the existing overhead facilities, “an increased awareness of the dangers of overheard transmission lines has come to light in addition to the benefits of undergrounding utility lines.” Complainants Brief at 3. The Complainants appear to argue, without any legal support, that due to “increased awareness” that the recorded easement is no longer valid and enforceable. The facilities were constructed well before The Meadows was designed. The Developer choose how to subdivide the property. The Complainants who purchased lots and/or homes did so with the actual knowledge of the existence of the overhead facilities. All the Complainants choose to move to The Meadows with the actual knowledge of the existence of the overhead facilities. The record evidence, Met-Ed Exhibit 1, the recorded easement for the existing facilities and Project, 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.** The Project is consistent with, and specifically authorized, under the recorded easement. To the extent that the Complainants seek to have the Commission invalidate or modify the legal rights under the recorded easement, the Respondents aver that the Commission lacks the necessary jurisdiction to determine the scope and validity of an easement. *Fairview Water Company v. Pa. PUC*, 509 Pa. 384, 502 A.2d 162 (1985)

3. *The Complainants incorrectly apply Chapter 57 of the Commission regulations.*

The Complainants, citing 52 Pa. Code § 57.76(a), argues that the Commission “considers safety a factor when considering transmission line siting application.” Complainants Brief at 4. As explained in MAIT’s Rebuttal Testimony, 52 Pa Code Section 57.76 is applicable to siting and construction of NEW transmission lines. The Project involves existing facilities. The Complainants acknowledge that neither the Code nor Commission regulations define the terms “safety” or “unreasonable risk of damage.” Their definition that there are no casualties, no injuries, no property damage, and no accidents resulting from the overhead lines and poles is absurd. Under their standard, no overhead could be constructed.

4. *The Complainants deliberately misstates the record evidence.*

The Complainants inappropriately offer testimony, for the first time, of FirstEnergy's reported financial situation citing 2021 Form 10-K for the fiscal year ended December 31, 2021. Rather than file a motion to strike the Complainants' inappropriate and unlawful attempt to expand the record at the briefing stage, the Respondents respectfully requests that Judges Hoyer and Coogan disregard the non-record testimony regarding the financials of the Respondents' parent, FirstEnergy.

The Complainants conclude that in the cited cases involving an electrocution, “[t]he Settlement Agreements to which a FirstEnergy subsidiary was a party to is evidence of negligent conduct that unfortunately resulted in death.” Complainant Brief at 10. The Settlement Agreements in the cited cases, which judicial notice was taken, specifically state the following:

- Had the matter been fully litigated, the FirstEnergy subsidiary would have denied each of the alleged violations of applicable statutes, the Commission's regulations, and the Code, raised defenses in support of its position that the FirstEnergy subsidiary committed no such violations, and vigorously defended itself against the same in this proceeding and any subsequent appeals.
- The respective settlement agreements were a compromise of the allegations in the complaint, which Commission Staff intended to prove, and that the FirstEnergy subsidiary intended to disprove.

There is no credible evidence that the Project is unsafe. The record evidence supports the following:

- The Complainants acknowledge that there are no standards for Electromagnetic Field (EMF) yet urge the Commission to “err on the side of caution.”
- The existing and the proposed facilities are built and operated with strict adherence to the requirements of all applicable state and federal statutes related to safety, including requirements specified in the North American Electric Reliability Corporation, Mandatory Reliability Standards, and the National Electrical Safety Code (NESC), as well as those adopted by the Commission and the Occupational Health and Safety Administration.
- No federal or state agency has adopted exposure limits based on a finding that EMF causes adverse health effects.
- Existing facilities were constructed over 30 years ago and no complainant has alleged any specific adverse health that they are currently experiencing.
- The Complainants knowing built or purchased their residence in The Meadows on but are only now alleging potential speculative health concerns.

- Certain complainants choose the location of their play equipment/swimming pools and expressed no concerns prior to the announcement of the Project. Only now do they raise the “potential area of risk.”
- Cost was only one factor in the design of the Project.
- The request to place the facilities underground was rejected for several reasons. Underground transmission lines are only buried when there are no viable above-ground options. The open trenching necessary to bury a transmission line causes greater environmental impacts, as does the need to create significant access roads to accommodate heavy equipment. It is also more difficult to restore power during outages on underground lines since it can take longer to identify and to repair damaged underground cables.
- There is no prohibition from using wood poles treated with pentachlorophenol. TR 265 and 266.

### **III. CONCLUSION**

The Complainants have failed to carry their burden of proof. 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 Complainants only offered personal, lay opinions that the Project is unsafe and unreasonable. Personal opinions, assertions and perceptions do not constitute evidence. *MAIT v PA. PUC*, 746 A2d. 1196 (Pa. Cmwlth. 2000). Substantial evidence requires more than a scintilla of evidence or suspicion of the existence of a fact to be established. *Bobchock v Unemployment Comp. Bd. of Review*, 525 A2d. 463, 465 (Pa. Cmwlth 1987). 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 its entirety.

Respectfully submitted,



Date: March 20, 2023

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