

July 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 to Exceptions of Samantha Bryant**

Dear Secretary Chiavetta:

Attached for filing is the Reply of Metropolitan Edison Company and Mid-Atlantic Interstate Transmission, LLC (collectively Respondents) to Exceptions filed by Samantha Bryant (Complainant), in the above referenced and consolidated proceeding.

A copy of the Reply Exceptions has been provided 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  
Enclosures

cc: The Hon. Mark A. Hoyer, PA Public Utility Commission [w/encls.]  
The Hon. John Coogan, PA Public Utility Commission [w/encls.]  
Office of Special Assistants, 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 to Exceptions of Samantha Bryant**

**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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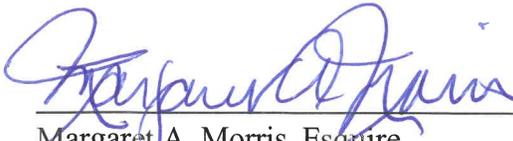
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Dated: July 20, 2023

  
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 and Michael Fedash	C-2021-3028418
Gregory Bair	C-2022-3030530

v.

Metropolitan Edison Company  
Mid-Atlantic Interstate Transmission, LLC

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

v.

Metropolitan Edison Company

**REPLY EXCEPTIONS OF METROPOLITAN EDISON COMPANY AND  
MID-ATLANTIC INTERSTATE TRANSMISSION, LLC  
TO EXCEPTIONS FILED BY SAMANTHA BRYANT**

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Dated: July 20, 2023

Margaret A. Morris, Esq.  
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*Counsel for Metropolitan Edison Company and  
Mid-Atlantic Interstate Transmission, LLC*

## **I. Introduction**

In accordance with Section 5.535 of Commission's regulation, 52 Pa. Code § 5.535, and the *Secretarial Letter*, dated June 20, 2023, Metropolitan Edison Company (Met-Ed) and Mid-Atlantic Interstate Transmission, LLC (MAIT), (collectively, Respondents) timely files their joint Reply to the Exceptions filed by Samantha Bryant (Complainant or Ms. Bryant) which supports the adoption of the Initial Decision (ID) of the Honorable Mark A. Hoyer (Judge Hoyer) and the Honorable John M. Coogan (Judge Coogan) without modification. The Commission should affirm the dismissal of the Formal Complaint for the Complainant's failure to carry her burden of proof at the scheduled hearing.

## **II. Relevant Procedural Background**

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.

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.

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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.

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 scheduled 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.

On February 17, 2023, Met-Ed and MAIT filed their Main Brief and Ms. Bryant also filed her Main Brief. On March 20, 2023, Met-Ed and MAIT filed their Reply Brief and Ms. Bryant also filed her Reply Brief.

On August 1, 2022, a *Fifth Interim Order* was issued, closing the hearing record. The ID was issued on June 20, 2023. The Complainant filed Exceptions on July 10, 2023.

### **III. Initial Decision**

Judge Hoyer and Judge Coogan found that the Complainant failed to meet her burden of proof that the proposed Transmission Line replacement project is unsafe or otherwise violates the Pennsylvania Public Utility Code (Code) or Commission regulations. ID at 22.

### **IV. Exceptions and Reply**

The Complainant's Exceptions violate Section 5.533(b) of the Commission's regulations,<sup>2</sup> which requires each exception to identify the finding of fact or conclusion of law to which exception is taken, and to cite to relevant pages of the ID. The Exceptions do not identify any specific error of law or abuse of discretion. The Exceptions fail to present a legally sufficient basis to alter the Findings of Fact and Conclusions of Law set forth in the Initial Decision. Some assertions appear to be a mere regurgitation of the Complainant's poorly supported claims presented at the hearing and in pleadings. The Complainant's attempt to further litigate this matter by simply disagreeing with the outcome of the ID without identifying any specific error of law or abuse of discretion to satisfy the requirements is procedurally improper and should be summarily dismissed.

The Complainant's numbered Exceptions and Respondents' responses are set forth below.

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<sup>2</sup> 52 Pa. Code § 5.533(b).

**Complainant’s Exception #1. The pole site location:**

*The new wooden pole location on my property moves the pole closer to my home. In the event that a pole would fall, the newer and taller version of the power line poles would touch our home. A guy wire is also scheduled to be placed in the center of our yard where our children play. During our hearings, Ms. Morris said that no one should play near the poles/wires, however she failed to define the word “near.”*

**Response:**

Commission regulations at 52 Pa. Code 5.501(a) sets forth what is required in every brief. Specifically, Section (a)(3) requires that the Complainant, who has the burden of proof, in her main or initial brief, completely address, to the extent possible, every issue raised by the relief sought and the record evidence. The Complainant’s Main Brief does not raise or in any manner address the issue of the proximity of the pole to her residence or Met-Ed’s communication with affected property owners.

Commission regulations at 52 Pa. Code 5.533 sets forth what procedure to except to an initial decision. Specifically, Section (b) requires that each exception identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception. The Complainant never raised the pole site location in her Main Brief and cannot except to the lack of any discussion in the Initial Decision. It is inappropriate to raise the issue in the exception stage of the proceedings. See, *Hess v. Pa. PUC*, 107 A.3d 246, 265-2669 (Pa. Cmwlth. 2014); *Ruth Matieu-Alce v. Philadelphia Gas Works*, Docket No. F-2015-2473661 (Opinion and Order entered April 7, 2016).

Complainant’s Exception #1 is without merit and should be denied.

**Complainant’s Exception #2. Using the PCP treated wooden poles:**

*Our neighborhood relies on well water. The placement of the pole is approximately 65 feet from our well cap. The chemicals that are used to treat the wood are now known toxins and are being phased out, but still being used by MET ED and MAIT.*

**Response:**

Neither the Complainant's Testimony nor Main Brief raise or address the issue of the proximity of the pole to the Complainant's well cap. It is inappropriate to raise the issue in the exception stage. See, *Hess, supra*; *Matieu-Alce, supra*.

Regarding the treatment of the poles, the Complainant simply disagrees Judge Hoyer and Judge Coogan finding that she did not provide substantial evidence that the use of PCP in the proposed Transmission Line replacement project (1) violates the Code or Commission regulations or orders; (2) there is currently no prohibition against the use of wood poles treated with PCP; and (3) no basis to find that already-treated poles cannot be used after February 28, 2027. ID 20-21. The Complainant does not allege that Judge Hoyer and Judge Coogan made an error of law or abused their discretion in any way. Instead, the Complainant simply disagrees with the finding and has offered no basis to reverse or modify the Initial Decision.

Complainant's Exception #2 is without merit and should be denied.

**Complainant's Exception #3. The Environmental Impact:**

*The power company stated "open trenching necessary to bury a transmission line causes greater environmental impacts" (page 18 of the Initial Decision). Upgrading the current power lines has happened on both sides of our neighborhood. The wooden roads that are placed on the ground and all the trees and foliage underneath have been dug up and hauled away. Heavy equipment and supplies pile up around the work site as extra trucks run in and out. I'm not sure how to quantify the environmental impacts of this verses underground, but MET ED and MAIT seem to be able to.*

**Response:**

As the Commission has previously recognized, a *pro se* litigant is not absolved of complying with procedural rules.<sup>3</sup> In *Blauhut v. PECO Energy Co.*,<sup>4</sup> the Commission recognized that a *pro se* litigant whose exceptions were based on evidence not of record and additional argument were not a basis for exceptions under Section 5.533 of the Commission's regulations

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<sup>3</sup> *Tremayne Shanault Lewis v. PECO Energy Co.*, Docket No. C-2010-2189187 (Order entered May 4, 2011).

<sup>4</sup> *Adolf H. Blauhut v. PECO Energy Co.*, Docket No. C-2009-2087552 (Order entered January 29, 2010).

and could not be considered. The same result should occur here; the Complainant's Exceptions raising issues outside the scope of the proceeding, i.e., alleged work being done outside of the Complainant's neighborhood, should not be considered by the Commission.

Complainant's Exception #3 is without merit and should be denied.

**Complainant's Exception #4. The derivation of The Initial Decision:**

*On Page 4 of the Initial Decision, it said "As detailed in the hearing transcript and January 18, 2023 briefing order, various lines of testimony and exhibits for the Complainants were excluded from the record on hearsay and other grounds". Our Direct Testimony (DT) with all the facts, accidents caused by the overhead power lines, the regulations/information cited with PCP use, the power company asserts our complainants, "only provide personal opinions, unsubstantiated concerns, speculation, and perceptions regarding the proposed Transmission Line replacement project" (Page 16 of the Initial Decision). The fire on the pole occurred in our backyard while the property was owned by a different family so the information and concerns were considered hearsay and dismissed. This incident is not hearsay and MET ED and MAIT dismiss that accidents like this happen.*

**Response:**

The evidentiary ruling and the admissibility of evidence were clearly based on the law and precedent. While the Complainant was not permitted to introduce hearsay evidence, she was NOT prohibited from engaging in cross-examination. However, the Complainant choose not to attend that part of the hearing where the respective witness for MAIT and Met-Ed presented their direct testimony and were subject to cross-examination. The Complainant did not respond to Judge Coogan when he asked if she had any questions:

*Ms. Bryant, are you there? Okay. I'm not sure if folks just dropped off or they don't have any questions. So either way, I will move on. Tr. 308.*

Complainant's Exception #4 is without merit and should be denied.

**V. Conclusion**

The Exceptions, either raising new evidence, irrelevant points, or repeating positions that Judge Hoyer and Judge Coogan soundly rejected based on the record evidence, are without merit. The substantial record evidence shows that the Complainant failed to carry her burden of proof that either the proposed Transmission Project is unsafe or otherwise violates the Code, Commission regulation or order. The findings of facts and conclusions of law in the ID are based on substantial record evidence.

**WHEREFORE**, for the foregoing reasons, Metropolitan Edison Company and Mid-Atlantic Interstate Transmission, LLC respectfully requests that the Commission deny the Exceptions of Samantha Bryant, adopt the Initial Decision of the Honorable Mark A. Hoyer and the Honorable John Coogan, without modification and dismiss with prejudice the Formal Complaints in their entirety in this consolidated proceeding.

Respectfully submitted,



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Date: July 20, 2023

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