

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 Pingqi Dai**

Dear Secretary Chiavetta:

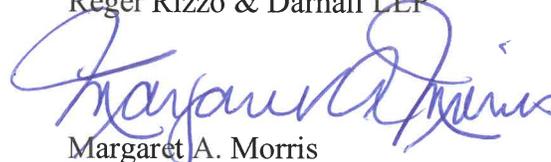
Attached for filing is the Reply of Metropolitan Edison Company and Mid-Atlantic Interstate Transmission, LLC (collectively Respondents) to Exceptions filed by Pingqi Dai (Complainant), in the above referenced and consolidated proceeding.

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.
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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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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 PINGQI DAI**

Dated: July 20, 2023

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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 Pingqi Dai (Complainant or Ms. Dai) 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.¹

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.

¹ 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. Dai also filed her Main Brief. On March 20, 2023, Met-Ed and MAIT filed their Reply Brief and Ms. Dai 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 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,² 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.

² 52 Pa. Code § 5.533(b).

Complainant's Exception #1. The pole site location:

The new wooden pole location on my property told by Met-Ed is different from what it stated in the First Interim Order (Denying Motion for Judgment on the Pleadings, posted on 4/22/2022). In the First Interim Order, it stated "the replacement pole on Complainant's property has been moved to its original location" (page 1). But the wood marker placed by Met-Ed in my backyard (refer to Complainants Direct Testimony (DT) lines 716-717, depicted in red) is approximately 10 feet away from the original pole site. It is not away from my house. It is actually approximately 10 feet closer to my house. The claim made by the power companies (Met-Ed and MAIT) in the Initial Decision stating "no allegation or evidence that the existing Transmission Line is negatively impacting (I) ... (4) is negatively impacting property values" (Page 17 of the Initial Decision) is NOT TRUE! The pentachlorophenol (PCP) coated wooden poles are taller and closer to my home and these dangers will absolutely create a negative effect on my well-being. The newly proposed site planned for these poles and lines will most definitely create a dreadful appeal and no doubt will reduce my property value. The proposed distance of the electric pole to my home is only 45 feet. This is the shortest distance of a powerline pole to a residential home in the entire neighborhood (Refer to Complainants DT lines 372). Met-Ed used deceptive communication to start the project of the replacement of the transmission lines. They informed only some of the neighbors affected by the proposed replacement line and only mentioned the placement and not fact that these poles can affect the health and safety of our neighbors. They did not mention the fact that the poles and lines would be closer to some of the homes and that they are coated with a chemical that has been determined to be unsafe for human touch and ingestion. They did not mention that this chemical can get into our wells or that it is being phased out by the EPA. They value containing their cost and ignore the health and safety risks these poles and lines produce. Let us not forget these changes can also negatively affect the property value of people who live under the powerlines. At the onset, I complained. FirstEnergy/Met Ed did not satisfactorily address my complaints or requests. These requests came from me, a woman, a minority woman, and a single mother of two children. It was my initial complaint that started the case.

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 proximity of the pole to her residence or Met-Ed's communication with affected property owners 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:

The power company knows that the EPA has already mandated a phase-out the use of PCP on poles, but they continue to use it because it is not against the law. This is absurd. If it is harmful to human life, it should NOT be allowed to be used, especially in such close proximity to all of the wells within our neighborhood. We have NO township water. This water is what we drink. All our local 83 residents are solely dependent on well water as our only source of potable drinking water. It is what our children drink. These poles are what our children will be playing around. We cannot keep our eyes on them in our own backyard 24 hours a day. If the power company insists on putting the PCP treated wooden pole into our ground, I will have my well water tested before and after and keep monitoring it with time. Our consolidated group is preparing a letter to go out to our neighborhood with the information regarding the use of PCP on these poles. The letter will mention that they, too, can check their well water both before and after any replacement of overhead poles that are coated with this dangerous chemical. Human life should be more important in the eyes of the law and the law should act to protect lives rather than help large companies save money. Any indication of PCP in the well water noted after the installation (and not noted before installation) will be addressed.

Response:

The Complainant's Main Brief does not 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 Public Utility 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 offers no basis to reverse or modify the Initial Decision.

As the Commission has previously recognized, a *pro se* litigant is not absolved of complying with procedural rules.³ In *Blauhut v. PECO Energy Co.*,⁴ 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 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., water testing, should not be considered by the Commission.

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

Complainant's Exception #3. The Environmental Impact:

Regardless the 204 pages of 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). But the power company can state "open trenching necessary to bury a transmission line causes greater environmental impacts" (page18 of the Initial Decision). Has FirstEnergy/Met Ed done the environmental impact analysis? What are the environmental impacts? Our backyards are just an open field with soil. Has the power company compared the cost of overhead electric powerlines vs the underground powerlines? What are the numbers? (They never intended to do an alternative approach and had no numbers to offer.) Furthermore, what is their cost for overhead compared to the cost of a human life or the cost to one human affected from the toxic chemical, PCP?

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

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

Response:

The Complainant's Exception simply disagrees with the findings in the Initial Decision and asks questions that should and could have been asked at the scheduled hearing. The Complainant had the opportunity to cross-examine the witness presented by Met-Ed and MAIT respectively but chose not to. Tr 299-300.

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". Yes, it makes me feel very sad that our 204 page long direct testimony is not enough to stop the power company from putting PCP into our soil, nor to let them follow the industrial trends to give us a reasonable solution. I do understand that PUC plays by the rules written out by the state legislature to the Public Utility. But the approach is not from the preventive way, instead, it seems that you have to wait for more lives to be lost or more lives to suffer health consequences due to these safety concerns of overhead poles/lines and more taxpayer's money has to be wasted in lawsuits, etc., before changes may be made and humans become more important than the bottom line of a company. The laws/regulations were established by the people. These laws need changed to be considerate of people. I, an immigrant from China, truly appreciates and enjoys living in the land of opportunity and the land of promise. I truly appreciate being accepted by my neighborhood and will continue to fight for an ordinary citizen's right for a reasonable solution for this powerline replacement project.

Response:

The evidentiary ruling and the admissibility of evidence were clearly based on the law and precedent. The Complainant has presented no rationale for reversing any of the evidentiary rulings. The time to make such a statement was in the Complainant's testimony and not in the exceptions stage of the proceedings.

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 Pingqi Dai, 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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