

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

Public Meeting held November 9, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair, Statement
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

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
Debora Connell	:	C-2021-3028186
Corey and Betty Rigberg	:	C-2021-3028348
Patricia Lane	:	C-2021-3028627

v.

Metropolitan Edison Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Pingqi Dai (Complainant), and Samantha Bryant (Complainant), filed on July 10, 2023, and July 11, 2023, respectively, to the Initial Decision (I.D.) of Deputy Chief Administrative Law Judge (DCALJ) Mark A. Hoyer, and Administrative Law Judge (ALJ) John M. Coogan, issued on June 20, 2023. The Metropolitan Edison Company and Mid-Atlantic Interstate Transmission, LLC (collectively, Met-Ed and MAIT or Respondents) each filed Replies to Exceptions, on July 20, 2023. For the reasons stated below, we shall adopt the Initial Decision and deny the Exceptions, consistent with this Opinion and Order.

I. History of Proceeding

This proceeding involves the Formal Complaints (Complaints) of 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 and Michael Fedash, Tracy and Jill Troutman, Patricia Lane, and Gregory Bair, (collectively, Complainants) against Metropolitan Edison Company (Met-Ed) 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-2021-3028346, C-2021-3028348, C-2021-3028414, C-2021-3028416, C-2021-3028418, C-2021-3028464, C-2021-3028627 and C-2022-3030530, respectively.¹ Subsequently, eleven (11) Complainants filed Amended Complaints to include Mid-Atlantic Interstate

¹ The procedural history for each Complaint is recounted by the First Interim Order entered at each docket.

Transmission, LLC (MAIT). One Complainant withdrew the Complaint against Met-Ed and refiled the Complaint versus MAIT.²

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 Complaints. Met-Ed's Answer and New Matter asserts that it is MAIT that owns the transmission line at issue, not Met-Ed.

MAIT filed an Answer and New Matter to each of the eleven (11) Amended Complaints filed against it. In its Answer, MAIT admitted or denied the various averments in the Amended 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.³

On April 22, 2022, the DCALJ and ALJ issued a First Interim Order:
(1) denying Met-Ed's Motions for Judgment on the Pleadings to remove it as a named

² One Complainant, Gregory Bair, originally withdrew his Complaint against Met-Ed, filed a Formal Complaint against MAIT then, on May 26, 2022, filed an Amended Formal Complaint to again include Met-Ed and seek consolidation with the other Complaints.

³ Amended 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.

Respondent; and (2) denying MAIT's Preliminary Objections in four of the above captioned proceedings.⁴

The Commission received eleven (11) Motions to Consolidate the above captioned proceedings from the Complainants at Docket Nos. C-2021-3028464; C-2021-3028278; C-2021-3028416; C-2021-3028211; C-2021-3028346; C-2021-3028286; C-2021-3028283; C-2021-3028314; C-2021-3028414; C-2021-3028418; and C-2022-3030530.

On May 20, 2022, Met-Ed and MAIT filed responses to the Motions to Consolidate in which the Respondents did not object to the consolidation of the dockets for which consolidation was requested.

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 the 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.

⁴ As previously noted, the full procedural history of the individual dockets up until April 22, 2022, is recounted by the First Interim Order issued at those individual dockets.

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 Briefs and Ms. Dai also filed her Reply Brief.

On August 1, 2022, a *Fifth Interim Order* was issued, closing the hearing record.

As previously noted, the Initial Decision was issued on June 20, 2023. The Complainants filed Exceptions on July 10, 2023, and July 11, 2023 respectively.⁵ On July 20, 2023, Met-Ed filed Replies to Exceptions.

II. Background

This consolidated proceeding concerns the Complaints brought by residents of a housing development through which a portion of the Campbell-Middleton-North Hershey 69 kV Transmission Line (Transmission Line) was constructed. The Transmission Line, which was constructed thirty (30) years prior to the housing

⁵ We acknowledge that the format of the Complainants Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the findings of fact and conclusions of law to which exception is taken, cite to the relevant pages of the Initial Decision, and provide supporting reasons for each Exception. Nevertheless, we retain discretion to liberally construe our procedural rules to secure a just and speedy resolution of a proceeding. Particularly where, as here, the Complainants appear *pro se*, and doing so will not affect the substantive rights of the parties, we will treat the Exceptions as having been properly constructed and filed. *See*, 52 Pa. Code § 1.2(d).

development, either passes through or is located nearby each of the Complainants' properties. Although the Transmission Line is owned by MAIT, it was constructed on the easement granted to Met-Ed. The Complainants filed the Complaints opposing a proposed Transmission Line replacement project to replace a portion of the existing above-ground wooden utility poles with similar above-ground wooden poles. The Complainants' opposition to the project was based primarily upon alleged health and safety concerns.

III. Discussion

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is 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 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. Legal Standards

1. Burden of Proof

Section 332(a) of the Public Utility 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). To establish a legally sufficient case and satisfy the burden of proof, a complainant must show that the named utility 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, a complainant's evidence must

be more convincing, by even the smallest amount, than that presented by the respondent utility. *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. 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 a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent utility. If the evidence presented by the respondent utility is of co-equal value or "weight," the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUG*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of production 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. Cmwlth. 2001).

2. Character of Service and Facilities

Section 1501 requires that utilities maintain safe service and facilities for the public. Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, provides, in relevant part:

§1501. Character of service and facilities

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.

66 Pa. C.S. § 1501.

Interpreting this provision in *West Penn Power Co. v. Pa. PUC*, 478 A.2d 947 (Pa. Cmwlth. 1984), the Commonwealth Court stated:

[w]e hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.

478 A.2d at 949 (footnote omitted).

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.

Service standards are also included in Chapter 57 of the Commission's Regulations. *See*, 52 Pa. Code §§ 57.1-57.259. This includes a utility's obligation to

maintain transmission system reliability by complying with the National Electrical Safety Code (NESC). *See*, 52 Pa. Code § 57.193.

It is well settled that the Commission may not exceed its jurisdiction and must act within its jurisdiction. *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Code. 66 Pa. C.S. §§ 101–3316. Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977). In applying the facts to the law, the issue becomes whether the proposed transmission line project is a violation of the Code, Commission Regulations, or a Commission Order.

B. ALJs' Initial Decision

In the Initial Decision, DCALJ Hoyer and ALJ Coogan made thirty-five (35) Findings of Fact and reached fifteen (15) Conclusions of Law. I.D. at 4-8 and 22-24. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The DCALJ and ALJ dismissed the Complaints, finding that the Complainants failed to carry their burden of proving that Met Ed, et al., violated the Code or a Commission Regulation or Order of the Commission regarding the proposed replacement of a portion of the Campbell-Middleton-North Hershey 69 kV Transmission Line. I.D. at 1, 22, citing 66 Pa. C. S. §§ 701, 332. Specifically, the Initial Decision

turned on the Complainants' failure to show that the proposed design of the Transmission Line replacement project was inconsistent with current industry standards and best practices. I.D. at 24.

The Initial Decision rejected the Complainants' primary assertions that the proposed Transmission Line replacement project was a health and safety risk for the residents of the community. The DCALJ and ALJ reasoned that the evidence produced by the Complainants, while more than personal opinions, was insufficient to establish that the proposed project was a risk to public health and safety, or otherwise in violation of the Code, Commission Regulations, or Orders. I.D. at 18-19.

In addition, the Initial Decision rejected the Complainants' assertions regarding the project's design and placement of the poles and transmission lines. The DCALJ and ALJ found that the Complainants have not cited any specific laws, regulations, or other standards applicable to the Respondents demonstrating that this specific proposed replacement project is unsafe. In contrast, the Initial Decision noted that MAIT's witness Kevin Irvine explained that both the poles and the Transmission Line are designed to meet the design criteria of the NESC. I.D. at 19 (citing Tr. 274-275, 305, 313-314). The Initial Decision further rejected the Complainants' position that the use of utility poles treated with PCP⁶ is unsafe. *Id.*

Finally, the Initial Decision rejected arguments raised regarding the validity of the easement granted to Met-Ed for the citing of the Transmission Line. The DCALJ and ALJ noted that the Commission lacks the jurisdiction to determine the scope and validity of an easement. The DCALJ and ALJ also noted that claims related to trespass, the scope and validity of an easement, or whether the Respondents' facilities are situated within a valid easement, are under the jurisdiction of the Courts of Common

⁶ Pentachlorophenol (PCP) is an industrial wood preservative used mainly to treat utility poles and cross arms to protect against fungi and termites.

Pleas, not the Commission. I.D. at 21 (citing *Fairview Water Co. v. Pa. PUC*, 502 A.2d 162 (Pa. 1985); *Petition of Librandi Machine Shop, Inc. For Declaratory Order*, 2021 Pa. PUC LEXIS 49 (Pa. P.U.C. 2021); *Boczar v. PPL Elec. Util. Corp.*, Docket No. C-20016332 (Order entered Feb. 10, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Order entered Sept. 14, 1999)).

The DCALJ and ALJ concluded that the existence of a record easement for the existing Transmission Line entered into between Met Ed and Roy E. Nye and Nancy Louise Nye, recorded on December 21, 1965, prior to the development of the Meadows subdivision, in favor of Met-Ed had been established. *See*, I.D. at 6, F.O.F No. 22 (citing Met-Ed Statement 1; Met-Ed Exhibit 1; I.D. at 21). Therefore, the ALJs concluded that any claims regarding the existence and/or scope of easements on the subsequent deeds of individual property owners in the Meadows Subdivision was beyond the scope of this proceeding. I.D. at 22 (citing *See, Messina v. Bell Atlantic-Pa.*, Docket No. C-00968225 (Order entered Sept. 23, 1998); *see also, Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977)).

C. Exceptions and Replies

The Complainants, Ms. Dai and Ms. Bryant, each filed Exceptions on similar grounds, setting forth four alleged errors in the Initial Decision regarding: (1) the pole site location; (2) using PCP treated wood poles; (3) environmental impact; and, (4) the derivation of the Initial Decision. Exc. of Dai at 1-3; Exc. of Bryant at 1-2. In Reply, Met-Ed and MAIT addressed each of the Exceptions on similar grounds, with certain distinctions. R. Exc. Dai at 4-9; R. Exc. Bryant at 4-8. For purposes of our

disposition, we shall consolidate the Complainants' Exceptions and Met-Ed and MAIT's Replies to Exceptions.⁷

1. Complainants' Exception No. 1 and Replies: Pole Site Location

In Exception No. 1, the Complainants aver that the proposed placement of the new poles differs from the position identified in the First Interim Order. Exc. of Dai at 1; Exc. of Bryant at 1. Specifically, Ms. Dai avers that Met Ed inaccurately represented that the placement of the new pole would be in the same location of the pole to be replaced, stating:

The wood marker placed by Met-Ed in my backyard...
is approximately 10 feet closer to my house.

Exc. of Dai at 1. Ms. Bryant averred that in the event the new pole fell, it would potentially touch their home since the new pole is taller than the existing pole. Ms. Bryant further alleged that the "guy wire" proposed to be placed in the center of the yard, created a danger where her children play. Exc. of Bryant at 1.

In its Replies to the Complainants' Exception No. 1, Met-Ed and MAIT, respectively, aver that the Complainants' Exception violates provisions of the Commission's Regulations. Specifically, Met-Ed and MAIT aver that the Exceptions violate Section 5.501(a) of the Commission Regulations by raising matters which were not raised by either Ms. Dai's or Ms. Brant's main or initial brief, *i.e.*, the proximity of the pole to the Complainants' homes. R. Exc. Dai at 5-6 (citing at 52. Pa. Code § 5.501(a)); R. Exc. Bryant at 5 (citing at 52. Pa. Code § 5.501(a)).

⁷ The Exceptions of Ms. Dai and Ms. Bryant were not filed jointly, however, the substantive grounds asserted in each numbered Exception are identical. In addition, the Company's Replies to Exceptions are substantively identical. Therefore, in our disposition of the Exceptions we shall consolidate both the summary of the Exceptions and the Replies thereto.

In addition, Met-Ed and MAIT aver that the Exception violates Section 5.533(b) of the Commission's Regulations, requiring that each exception identify the finding of fact or conclusion of law in the Initial Decision to which exception is taken. R. Exc. Dai at 6 (citing 52 Pa. Code §5.533(b); R. Exc. Bryant at 5 (citing 52 Pa. Code § 5.533(b)). Met-Ed and MAIT argue that the Exception fails to identify any specific error of fact or law or abuse of discretion and, therefore, fails to assert any sufficient basis to alter the Findings of Fact and Conclusions of Law set forth in the Initial Decision. Met-Ed and MAIT assert that the Commission should dismiss the Complainants' Exception No. 1 as both lacking sufficient factual or legal basis and procedurally improper. *Id.* (citing *See, Hess v. Pa. PUC*, 107 A.3d 246, 265-269 (Pa. Cmwlth. 2014); *Ruth Matieu-Alce v. Philadelphia Gas Works*, Docket No. F-2015-2473661 (Opinion and Order entered April 7, 2016)).

2. Complainants' Exception No. 2 and Replies: Use of PCP-Treated Poles

In Exception No. 2, the Complainants aver that the Respondents' use of PCP in utility poles, although lawful, is unreasonable based upon the fact that the use of PCP is to be phased out over time because it is known to be harmful. Both Complainants allege that the use of PCP near wells in the neighborhood poses a serious risk. Dai Exc. at 1-2; Bryant Exc. at 1.

In the Replies to the Complainants' Exception No. 2, Met-Ed and MAIT aver that Ms. Dai's Exception, which asserts that the PCP-treated pole in proximity to her well cap creates a danger, asserts evidence not in the record. Met-Ed and MAIT note that neither the Complainant Dai's Main Brief, nor the Complainant Bryant's Testimony or Main Brief raise the proximity of the PCP-treated pole to the well cap as an issue. As such, Met-Ed and MAIT assert 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. R. Exc. Dai

at 6-7 (citing, *Tremayne Shanault Lewis v. PECO Energy Co.*, Docket No. C-2010-2189187 (Final Order entered July 15, 2011) (*Lewis*); *Adolf H. Blauhut v. PECO Energy Co.*, Docket No. C-2009-2087552 (Opinion and Order entered January 29, 2010) (*Blauhut*)). Met-Ed and MAIT further note that where the party's Main Brief does not raise an issue, it is not appropriate to raise it on exceptions. R. Exc. Dai at 6-7 (citing *See, Hess, supra; Matieu-Alce, supra*); R. Exc. Bryant at 6 (citing, *see, Hess, supra; Matieu-Alce, supra*).

Met-Ed and MAIT aver that the Complainants offer no basis to reverse or modify the Initial Decision, and simply disagree with the finding of the DCALJ and the ALJ that there was insufficient evidence to support a finding that the use of PCP in the proposed Transmission Line replacement project violates the Public Utility Code or Commission Regulations or Orders. Met-Ed and MAIT assert that the Complainants refuse to accept the legal significance of the fact that there is a prohibition on the use of PCP-treated poles; and that the use of already-treated poles remains permissible after February 28, 2027. *Id.* (citing I.D. 20-21.)

Based on the foregoing, the Respondents assert that the Complainants' Exception No. 2 is without merit and should be denied. R. Exc. Dai at 7; R. Exc. Bryant at 6.

3. Complainants' Exception No. 3 and Replies: Environmental Impact

In the Complainants' Exception No. 3, the Complainants aver that the environmental impact of the proposed transmission lines on poles versus placing the transmission lines underground is not established in the record and that the Respondents should be required to justify the use of poles versus underground transmission lines. Exc. of Dai at 2; Exc. of Bryant at 1.

In the Replies to the Complainants' Exception No. 3, Met-Ed and MAIT aver that, as to Complainant Dai, the Complainant simply disagrees with the findings in the Initial Decision and poses questions regarding the weight of evidence. However, Met-Ed and MAIT aver that any questions regarding the sufficiency of evidence should 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. R. Exc. Dai at 8 (citing Tr 299-300).

As to Complainant Bryant, Met-Ed and MAIT assert that, to the extent the Exception raises issues regarding matters not in evidence, *i.e.*, alleged work being done outside the Complainant's neighborhood, the Exception raises evidence not in the record and should be disregarded and dismissed, as improper under Section 5.533 of Commission Regulations. R. Exc. Bryant at 6-7 (citing *Tremayne Shanault Lewis v. PECO Energy Co.*; *Adolf H. Blauhut v. PECO Energy Co.*).

Based on the foregoing, the Respondents assert that the Complainants' Exception No. 3 is without merit and should be denied. R. Exc. Dai at 8; R. Exc. Bryant at 6-7.

4. Complainants' Exception No. 4 and Replies: Derivation of the Initial Decision

In their Exception No. 4, the Complainants challenge the Initial Decision's exclusion of the certain evidence, *i.e.*, various lines of testimony and exhibits, on hearsay and other grounds. Exc. of Dai at 2-3; Exc. of Bryant at 1-2. The Exception states no grounds upon which the evidence should have been properly admitted into evidence.

In the Replies to the Complainants' Exception No. 4, Met-Ed and MAIT aver that the DCALJ's and the ALJ's evidentiary ruling on the admissibility of evidence

was clearly based on the record and applicable legal precedent. Met-Ed and MAIT note that the Complainants have presented no reason for reversing any of the evidentiary rulings. Further, as to Complainant Dai's argument, Met-Ed and MAIT note that the time to make a challenge to the evidentiary ruling was at hearing rather than the exceptions stage of the proceedings. R. Exc. Dai at 8. Regarding Complainant Bryant, Met-Ed and MAIT note that the Complainant was afforded the opportunity to engage in cross-examination of Met-Ed and MAIT's witnesses, however, the Complainant chose 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. R. Exc. Bryant at 7 (citing Tr. 308).

Based on the foregoing, the Respondents assert that the Complainants' Exception No. 4 is without merit and should be denied. R. Exc. Dai at 8; R. Exc. Bryant at 7.

D. Disposition

At the outset, we note, as previously stated, the format of the Exceptions does not strictly comply with Section 5.533(b) of our Regulations, which requires that each exception be numbered and identify the finding of fact and conclusion of law to which exception is taken and cite to the relevant pages of the Initial Decision. 52 Pa. Code § 5.533(b). Nevertheless, recognizing that the Complainants are appearing *pro se*, we will accept the Exceptions as filed, pursuant to Section 1.2(a) of our Regulations, and consider the merits. *See, e.g., Destefano v. Peoples Natural Gas Company*, 56 Pa. P.U.C. 489 (1982); *Halpern v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00923950 (Opinion and Order entered October 19, 1992); *William Schlinder v. The Bell Telephone Company of Pennsylvania*, Docket No. F-00161252 (Opinion and Order entered March 26, 1993).

Upon review, while we recognize that the Complainants are acting *pro se*, and therefore, view the substance of the Exceptions in a broad manner, we find that the substance of Complainant's Exceptions Nos. 1-4 fail to identify or even imply any specific error of fact or law and/or abuse of discretion by the DCALJ's and ALJ's Initial Decision. As such, the Exceptions fail to assert sufficient basis to reject any of the DCALJ's and ALJ's Findings of Fact and Conclusions of Law set forth in the Initial Decision. While it is proper to construe the filings of a *pro se* Complainant in a broad manner in the interest of justice, a *pro se* Complainant must nevertheless assert a cognizable basis for finding a factual or legal error in the Initial Decision. *See, e.g., Lewis.*

For example, the Complainants' Exceptions raise the issue of the proposed proximity of the utility poles. *See, Dai Exc. No. 1* (regarding pole proximity to residence); *Bryant Exception No. 2* (regarding pole proximity to well cap). However, for the issue of proximity of the poles to be properly raised on exception, the parties would have had to have raised it in the proceeding before the DCALJ and the ALJ. *See, Hess v. Pa. PUC*, 107 A.3d 246, 265-269 (Pa. Cmwlth. 2014); *Ruth Matieu-Alce v. Philadelphia Gas Works*, Docket No. F-2015-2473661 (Opinion and Order entered April 7, 2016). In the present case, the Complainants did not argue the issue of proximity of the poles when afforded the opportunity to do so in the Complaint proceeding. As noted by Met-Ed and MAIT, it is improper to raise any dispute on exception regarding an issue which was not raised in the initial proceeding. Therefore, we shall disregard such issues where the Complainants failed to raise them in the Complaint proceedings. *See also, Blauhut.*

By way of further example, the Complainants' Exception No. 2 challenges the use of PCP-treated poles, while also acknowledging that the practice remains lawful and is not violative of any relevant industry and/or legal standards. The Complainants' Exception No. 3 asserts that Met-Ed and MAIT should be required to provide evidence of

the detrimental environmental impact of underground power lines versus utility poles. However, when given the chance to raise a question on the issue or cross examine Met-Ed and MAIT's witness on the issue, the record reflects that neither of the Complainants did so. *See*, Exc. of Dai No. 2; Exc. of Bryant No. 2.; Exc. of Dai No. 3; Exc. of Bryant No. 3; Tr 299-300. Finally, the Complainants' Exception No. 4 challenges the DCALJ's and ALJ's ruling which excluded certain evidence as hearsay and other grounds. The substance of the Exception expressed apparent disagreement with the evidentiary ruling but offered no legal reason to alter it. *See*, Exc. of Dai No. 4; Exc. of Bryant No. 4.

We find that, while the Complainants' Exceptions Nos. 1-4 assert *disagreement* with the conclusions reached in the Initial Decision, they fail to assert any factual or legal basis which would warrant reaching a different conclusion than that of the DCALJ and ALJ in the Initial Decision. Where the exceptions fail to assert any basis upon which to find a factual or legal error in the Initial Decision, the exceptions are properly dismissed. *See, e.g., Lewis*.

Upon review, we find that the Exceptions, either raising new evidence, immaterial matters, or rearguing positions that the DCALJ and ALJ rejected based on the record evidence, assert no basis upon which to modify the Initial Decision and are, therefore, without merit. We further conclude that based upon the substantial record evidence the DCALJ and ALJ properly found that the Complainants failed to carry their burden of proof that either the proposed Transmission Project is unsafe or otherwise violates the Code, Commission Regulation, or Order.

III. Conclusion

Based upon our review of the record and the applicable law, we shall: adopt the Initial Decision of the DCALJ and ALJ, deny the Exceptions of the

Complainants, and dismiss the Complaints, consistent with this Opinion and Order;
THEREFORE,

IT IS ORDERED:

1. That the Exceptions of Pingqi Dai, filed on July 10, 2023, to the Initial Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge John M. Coogan, issued on June 20, 2023, at Docket No. C-2021-3028302, are denied, consistent with this Opinion and Order.

2. That the Exceptions of Samantha Bryant, filed on July 10, 2023, to the Initial Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge John M. Coogan, issued on June 20, 2023, at Docket No. C-2021-3028283, are denied, consistent with this Opinion and Order.

3. That the Initial Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge John M. Coogan, issued on June 20, 2023, at Docket Nos. C-2021-3028464; C-2021-3028278; C-2021-3028416; C-2021-3028211; C-2021-3028346; C-2021-3028286; C-2021-3028283; C-2021-3028314; C-2021-3028414; C-2021-3028418; C-2022-3030530; C-2021-3028302; C-2021-3028186; C-2021-3028348; and C-2021-3028627, is adopted without modification, consistent with this Opinion and Order.

4. That the Formal Complaints at Docket Nos., C-2021-3028464; C-2021- 3028278; C-2021-3028416; C-2021-3028211; C-2021-3028346; C-2021-3028286; C-2021-3028283; C-2021-3028314; C-2021-3028414; C-2021-3028418; C-2022-3030530; C-2021-3028302; C-2021-3028186; C-2021-3028348; and C-2021-3028627, be dismissed and the Docket Nos. be marked closed.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name being more prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: November 9, 2023

ORDER ENTERED: November 9, 2023