

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

Noreen McCarthy
vs.
Metropolitan Edison Company

Public Meeting held July 11, 2024
3006923-OSA
Docket No. C-2019-3006923

STATEMENT OF VICE CHAIR KIMBERLY BARROW

On January 7, 2019, Ms. Noreen McCarthy filed a Formal Complaint against Metropolitan Edison Company (Met-Ed) averring that she wishes to opt-out of a smart meter installation for health and safety reasons. On March 10, 2019, Ms. McCarthy filed an Amended Complaint.

An evidentiary hearing was held on July 14, 2020. Ms. McCarthy attempted to offer the testimony of three witnesses, Laura S. Murphy, PhD, Esquire, Mr. Wes Zimmerman, and Tania Slawecki, PhD. However, the Administrative Law Judge (ALJ) did not permit the witnesses to testify after determining that they could not be qualified as experts or that the proffered testimony was irrelevant or inadmissible hearsay. After Ms. McCarthy completed her testimony without interruption, Met-Ed made an oral motion to dismiss for failure to meet the burden of proof, and the ALJ granted the motion from the bench.

An Initial Decision was issued on October 15, 2020, dismissing the Formal Complaint with prejudice. The ALJ supported the decision, in part, by noting that no expert testimony was presented to support Ms. McCarthy's allegations on the medical or scientific effects of a smart meter. Ms. McCarthy filed Exceptions.¹

I disagree with the ALJ's decision to preclude two of the three witnesses presented by Ms. McCarthy from providing testimony during the evidentiary hearing and believe that the matter should be remanded back to the Office of Administrative Law Judge for consideration of that testimony. Admissibility pertains to whether an expert's testimony has any reasonable pretension to specialized knowledge on the subject under investigation.²

¹ On November 4, 2020, the Commission entered an Order instituting a stay of certain formal complaint proceedings then pending before the Commission involving challenges to electric distribution companies' deployment of smart meter technology while similar cases were being appealed. *Smart Meter Procurement and Installation*, Docket Number M-2009-2092655 (Order entered Nov. 4, 2020); see *Povacz, et al. v. Pa. PUC*, 280 A.3d 975, 999-1000 (Pa. 2022). The stay was lifted by Commission order dated November 14, 2023. *Smart Meter Procurement and Installation*, Docket Number M-2009-2092655 (Order entered Nov. 14, 2023).

² It is well settled in Pennsylvania that the standard for qualification of an expert witness is a liberal one. *Rauch v. Mike-Mayer*, 783 A.2d 815 (Pa. Super. 2001). Pennsylvania Rule of Evidence 702 provides that an expert may testify, "if scientific, technical or other specialized knowledge beyond that possessed by a layperson will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise." Pa.R.E. 702. The Commission has recognized Rule 702 for the purposes of expert witness testimony in Commission proceedings. See *Pennsylvania Public Utility Commission v. Township of Falls- Sewer Fund*, Docket No. R-00049557 (Order entered June 27, 2005)(adopting the standard in *Miller v. Brass Rail Tavern, Inc.*, 664 A.2d 525, 528 (Pa. 1995)); see also *Thomas Maslar v. PPL Electric Utilities Corporation*, Docket No. C-2018-3003075 (Order entered August 27,

Here, Ms. McCarthy attempted to offer the expert testimony of Laura S. Murphy, PhD, Esquire, Mr. Wes Zimmerman, and Tania Slawecki, PhD. Doctor Slawecki testified that she has experience in: (1) microwave work at the Penn State Microwave Processing and Engineering Center; (2) she is familiar with radiation safety training; (3) she is aware of the hazards of ionizing radiation; and (4) she is familiar with the interface between electromagnetism and health.³ In a case such as this, one involving technology, an expert witness is needed to satisfy the burden of proof. Additionally, because the qualifications of Dr. Murphy were not vetted at the hearing, there was no valid basis to disqualify her testimony.⁴ If Ms. McCarthy had been provided the opportunity to offer the testimony of those witnesses, it could have subsequently been weighed against the testimony of the witnesses presented by Met-Ed⁵ when ruling on the complaint. The unsupported disqualification of her experts left Ms. McCarthy with no real opportunity to support her Formal Complaint, and is not consistent with the rules of evidence.

July 11, 2024



Kimberly Barrow, Vice Chair

2020(“We stated that opinion testimony from a qualified expert witness in the relevant technical or medical fields based on the studies would have been required to support a finding of fact in this proceeding. May 2020 Order at 16-17 (citing Pa. R.E. 702).”).

³ Hearing Transcript, pgs. 63-67.

⁴ Hearing Transcript, pg. 86.

⁵ Met-Ed alleged in its objections to Dr. Slawecki’s testimony that Dr. Slawecki is a litigant in another smart meter case and thus not a credible witness. Hearing Transcript, pg. 70. If Dr. Slawecki did have a case pending before the Commission relating to smart meters, this fact does not render her testimony inadmissible. To render such a finding would be to invalidate or render almost all of the electric distribution companies’ expert witnesses in smart meter cases uncredible since they were involved in other pending matters before the Commission. *See eg. Diane Distefano v. Metropolitan Edison Company*, Docket No. C-2017-2631007 (Final Order entered July 9, 2020)(Met-Ed’s expert witness was Dr. John Ahr.); *Kim Martin v. Metropolitan Edison Company*, Docket No. C-2017-2631482 (Order entered February 22, 2024)(Met-Ed’s expert witness was Dr. John Ahr.); *Cindy Kelly v. Metropolitan Edison Company*, Docket No. C-2018-3004681 (Order entered March 14, 2024)(Met-Ed’s expert witness was Dr. John Ahr.); *Monica Smith and Michael Williams v. Metropolitan Edison Company*, Docket No. C-2018-3000222 (Order entered April 4, 2024)(Met-Ed’s expert witness was Dr. John Ahr). Rather, Dr. Slawecki’s potential involvement in another matter before the Commission could potentially impact her credibility, the analysis of which would occur after testimony and evidence from all parties is offered. The credibility of a witness is not about whether the testimony should be heard, but how much influence it should have on the ALJ’s final decision.