

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-------------------------------------|---|----------------|
| Deborah Engisch-Platt and Kim Platt | : | |
| | : | |
| v. | : | C-2019-3013745 |
| | : | |
| Metropolitan Edison Company | : | |

**INTERIM ORDER
DENYING MOTION TO RECUSE**

On September 5, 2024, I issued an Interim Order Cancelling Hearing and Scheduling Further Proceedings, which included a rendition of the relevant procedural history of the Platts’ complaint. I will not repeat that rendition here. Thus, purpose of this order is rule on the Platts’ Motion to Recuse filed on August 28, 2024. The Company filed an answer to the motion to recuse on September 4, 2024. For the reasons set forth below the Motion to Recuse is denied.

In their motion they state that I and “other administrative law judges must recuse themselves in favor of a jury trial ” based on the U.S. Supreme Court’s recent ruling in *Securities and Exchange Commission v. Jarkesy*.¹ The Platts also contend that I can not be fair and unbiased because the PUC pays my salary, they claim that I refuse to be a finder of fact, misstate facts and that I have failed to file an order admitting the Platts’ exhibits.

The U.S. Supreme Court’s decision in *Securities and Exchange Commission v. Jarkesy*, held that the SEC’s antifraud provisions replicate common law fraud. Therefore, the Seventh Amendment of the U.S. Constitution entitles a defendant to a jury trial before an Article III court where the SEC alleges fraud and seeks civil penalties.

¹ 144 S.Ct. 2117 (2024). The Platts also cite *Axon Enterprise, Inc. v. Federal Trade Commission*, 598 U.S. 175 (2023).

The U.S. Supreme Court's holding in *Jarkesy* does not apply to consumer complaints involving smart meters before a state administrative agency. The Commonwealth Court has held that the Public Utility Code does not expressly or impliedly require a trial by jury under the Pennsylvania Constitution.² Further, since regulated utility service did not exist at the time the Pennsylvania Constitution was ratified in 1790, there is no common law basis for proceedings before the Commission.³ Indeed, in recognition of the limitation of the Commission's authority to grant relief beyond the relief authorized by the Public Utility Code, the Commission routinely declines to award money damages, interpret private contracts or otherwise exceed its jurisdiction as defined by the Code.⁴ Indeed, if the Platts believe that they are entitled to relief beyond the Commission's jurisdiction, they are free to seek relief in another tribunal.

Further, while I can consider the Platts' claims that I should recuse myself, I do not have the authority to recuse all of the Commission's administrative law judges.

The Commission's Rules of Practice and Procedure permit parties to file a motion for disqualification of a presiding officer, pursuant to 52 Pa. Code § 5.482, which states as follows:

§ 5.482. Disqualification of a presiding officer.

A party may file a motion for disqualification of a presiding officer which shall be accompanied by affidavits alleging personal bias or other disqualification.

A presiding officer may withdraw from a proceeding when deemed disqualified in accordance with law.

A motion for disqualification shall be served on the presiding officer and the parties to the proceeding.

² Vertis Group, Inc. v. Pa. Publ. Util. Comm'n, 840 A.2d 390 (Pa. Cmwlth. 2003).

³ *Id.*

⁴ *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977).

(d) The presiding officer will rule upon a motion for disqualification within 30 days of receipt. Failure to rule upon a motion for disqualification within 30 days of its receipt will be deemed to be a denial of the motion.

(e) The ruling of the presiding officer on a motion for disqualification is subject to the interlocutory appeal procedure in § 5.303 (relating to Commission action on petition for interlocutory review and answer).

Although styled as a motion for recusal, I will treat the Platts' motion as a motion for disqualification. It is presumed that a judge has the ability to determine whether he will be able to rule impartially and without prejudice.⁵ The Supreme Court of Pennsylvania has stated that once a motion for recusal has been made, "it is the duty of the judge to decide whether he feels he can hear and dispose of the case fairly and without prejudice."⁶ However, it is also a duty of a judge to preside where there is no valid reason for disqualification.⁷

A party moving for recusal must show that there are facts that demonstrate personal bias or prejudgment on the part of the presiding officer.⁸ Merely questioning my impartiality is not sufficient to warrant recusal. If that was so, then any judge may be compelled to recuse him or herself just because the issue was raised. Only facts, not conclusions, are relevant in deciding a motion for disqualification.⁹ The Platts have not provided any factual support for a claim that I am personally biased towards or against any party in this case or that I have prejudged these proceedings.

⁵ *Commonwealth v. Druce*, 848 A.2d 104, 108 (Pa. 2004).

⁶ *Commonwealth v. Travaglia*, 661 A.2d 352, 369-370 (Pa. 1995); *Reilly v. Southeastern Pennsylvania Transportation Authority*, 489 A.2d 1291, 1300 (1985).

⁷ *Sharp v. Johnson*, 2007 U.S. Dist. LEXIS 76254, *9, (W.D. Pa. 2007) (citing *Edwards v. U.S.*, 334 F.2d 360, 362 n.2 (5th Cir. 1964); *United States v. Hall*, 424 F. Supp. 508, 534 (W.D. Ok. 1975), *aff'd*, 536 F.2d 313 (10th Cir. 1976)). *See also* 66 Pa.C.S. § 334(a).

⁸ 52 Pa. Code § 5.482 (a); *See DeLone v. PECO Energy Company*, Docket C-20066721 (Opinion and Order entered July 18, 2008); *United States v. Thomas*, 299 F. Supp. 494, 499 (E.D. Missouri 1968).

⁹ *United States v. Thomas*.

“Personal bias,” has been defined as attitudes, opinions, or comments which are "based on purely personal feelings towards the parties in a case."¹⁰ It is a personal feeling about a party that causes the decision-maker to favor or disfavor that party. To be disqualifying, personal bias must result in an opinion on the merits of a case that is not supported by the record.¹¹ That personal bias must be pronounced, as even intemperate or vehement statements do not require disqualification.¹² An adverse ruling is not sufficient to establish a personal bias.¹³

In this case, I have no doubt about my ability to be impartial.¹⁴ My impartiality has not been reasonably questioned because the Platts have failed to provide any factual support for their assertion that they cannot receive a fair hearing without bias, hostility, or prejudgment.¹⁵ The fact that I am an employee of the Public Utility Commission is not evidence that I can not be fair and impartial.

The Platts’ point to language in my orders which they argue is evidence that I “have stacked the deck” against them. Specifically, in their view, quoting from the pleadings amounts to a “false narrative” and apparently equates to prejudging the merits of their claims. They take exception to the statement that “Mr. Platt is 63 years old” when he is, in fact, 68 years old.

¹⁰ *Johnson v. Trueblood*, 629 F.2d 287, 291 (3d Cir. 1980).

¹¹ *United States v. Grinnell Corp.*, 384 U.S. 563, 583, 86 S.Ct. 1698, 1710 (1966). *See Zied v. PECO Energy Company*, Docket No. F-2015-2500342 (Opinion and Order entered September 15, 2016).

¹² *Johnson*, 629 F.2d at 291; *Knapp v. Kinsey*, 232 F.2d 458 (6th Cir. 1956).

¹³ *Berger v. United States*, 255 U.S. 22, 41 S. Ct. 230, 65 L. Ed. 481 (1921); *United States v. Beneke*, 449 F.2d 1259 (Eighth Cir. 1971).

¹⁴ 66 Pa.C.S. § 331(c).

¹⁵ *Pennsylvania Publications v. Public Utility Commission*, 152 Pa. Super. 279, 32 A.2d 40, *reversed on other grounds*, 349 Pa. 184, 36 A.2d 777, 153 ALR 457 (1943).

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Revised Sept 3, 2024

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