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February 12, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Janice DeNito Branagh v. PECO Energy Company
Docket No. C-2016-2576738

Dear Secretary Chiavetta:

A copy of PECO's Reply Exceptions is attached for filing. A certificate of service evidencing that service is attached for filing.

Very truly yours,



Ward L. Smith
Counsel for PECO Energy Company

WS/adz
Enclosures

c: Honorable Darlene D. Heep, ALJ
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Janice DeNito Branagh :
 :
 v. : Docket No. C-2016-2576738
 :
 PECO Energy Company :

CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that on February 12, 2018, I served a copy of PECO Energy Company's Reply Exceptions in the above matter, upon all interested parties via email and U.S. first class mail to:

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Dated: February 12, 2018



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Janice Denito Branagh

v.

PECO Energy Company

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C-2016-2576738

Reply Exceptions of PECO Energy Company

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I. Introduction

By Secretarial Letter dated January 12, 2018, the Commission issued the Initial Decision of Administrative Law Judge Darlene Heep in this docket. Exceptions were due on February 2, 2018. On that date, PECO filed a letter stating that it was not filing exceptions.

On February 1, 2018, PECO received a single-page document from Ms. Branagh, dated January 29, 2018 titled: "Exceptions of Janice DeNito Branagh Re: Case C-2016-2576738." Ms. Branagh's Exceptions are comprised of four unnumbered paragraphs. PECO has parsed five claims in those paragraphs that might be deemed exceptions to the Initial Decision. The purpose of these Reply Exceptions is to briefly respond to the arguments raised in Ms. Branagh's Exceptions.

II. PECO's Reply to Ms. Branagh's Exceptions

A. Reply to Ms. Branagh's First Exception: The Initial Decision accurately describes Ms. Branagh's medical conditions

Ms. Branagh's first exception is that she does not believe that the Initial Decision discussed one of her health claims. She states:

On page 2 of the initial decision, it states that I provided a letter from my physician stating I have [certain named symptoms or conditions]. It does not state that I also supplied a letter stating that I am under the care of a [named specialist and specialty]. I am seeing her for [a named medical issue]. On page 7, it states that the [named medical issue] first occurred in approximately 2012. This is correct however, there was only one incident in 2012 lasting approximately 30 minutes. There was not another incident until 2017 where in the summer it became a daily and constant occurrence, interfering with my daily activities. This was after the installation of the AMI gas meter.¹

¹ In order to protect Ms. Branagh's privacy, in these Reply Exceptions PECO is not giving specific information regarding her medical conditions. However, the Confidential Transcript and the Proprietary Initial Decision contain full discussion of her medical conditions.

The medical issue addressed in Ms. Branagh's exceptions was fully described and discussed in the Proprietary Initial Decision. *See* Proprietary Initial Decision at 7 (Finding of Fact 39); pp. 13, 14, 16-17, 18, and 21-22. The letter from Ms. Branagh's specialist doctor is discussed at page 14 of the Proprietary Initial Decision. PECO's medical expert, Dr. Mark Israel, reviewed the scientific research regarding radio frequency fields and the specific medical condition identified in Ms. Branagh's exceptions. *See* Confidential Transcript, pp. 192-195. The Proprietary Initial Decision correctly reported (p. 17) Dr. Israel's conclusion: "[T]he studies as a whole do not show that radio frequency fields cause, contribute to or exacerbate" Ms. Branagh's specified medical condition.

In sum, the Proprietary Initial Decision fully and appropriately addresses the specific medical claim identified in Ms. Branagh's exceptions.

B. Reply to Ms. Branagh's Second Exception: Dr. Mark Israel is a medical doctor and is an expert in whether there is a relationship between electromagnetic fields, and particularly radiofrequency fields, and health effects.

Ms. Branagh's second exception is that, even though she did not object at hearing to PECO witness Dr. Mark Israel being recognized as an expert witness, she now does not believe the he is an expert because "he is not board certified in [E]nvironmental Medicine."

Dr. Mark Israel is a medical doctor who was educated at Albert Einstein College of Medicine and trained at Harvard Medical School. He is licensed to practice medicine and treat patients. He has taught medical students, interns, and medical residents for more than 25 years. He has worked at the National Institutes of Health (at both the National Institute of Allergy and Infectious Disease and the Molecular Genetics Section of the National Cancer Institute) and at the University of California Medical School in San Francisco. Tr. 175-77.

He has also been Professor at Dartmouth Medical School, Director of the Dartmouth Cancer Center, and had a research laboratory at Dartmouth. He has published more than 200 scientific papers reporting the results of his research. Dr. Israel is an elected member of the American Association for the Advancement of Science and American Society of Clinical Investigation. He has received the C. Everett Koop Medal of Courage for work in evidence-based medicine, and has been awarded the United States Public Health Service Commendation Medal. Tr. 175-82. He has been analyzing the research involving radio frequency fields and health for more than 25 years ago. Tr. 181-82.

Dr. Israel was recognized, *without objection*, as an expert in the fields of medicine and medical research, including cancer, and the possible health effects of electromagnetic fields including power frequency fields and radiofrequency fields. Tr. 183. *See also*, Initial Decision, pp. 16.

Even though, at hearing, Ms. Branagh accepted Dr. Israel as an expert in his designated fields without objection, she is now asserting that in order to be an expert he would need, in addition to the many qualifications set forth above, to also be board-certified in Environmental Medicine. There is no testimony or supporting evidence to suggest that such qualifications are necessary to give expert testimony in the fields in which Dr. Israel qualified as an expert. Given Dr. Israel's extensive qualifications, this argument provides no basis to challenge his recognition as an expert.²

² Pennsylvania Rule of Evidence 703 defines an expert as one whose "scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson." Dr. Israel's extensive qualifications far exceed that standard.

C. Reply to Ms. Branagh's Third Exception: The Initial Decision correctly analyzed the burden of proof

Ms. Branagh's third exception is that the Initial Decision did not correctly apply the burden of proof. She states:

The judge's decision states that I did not meet the burden of proof showing that RF radiation produced by these meters is detrimental to human health. I say again that there are not enough human studies with this relatively new technology to meet this burden of proof.

In this argument, Ms. Branagh is requesting a reversal of the burden of proof. Her position is that, if there is an *absence* of evidence, then the Commission should rule in her favor *because she had no evidence*.

That is not how the burden of proof is applied in Commission proceedings. As the Initial Decision correctly noted (pp. 10-11), Ms. Branagh has the burden of proving her claims, which means she has "a duty to establish a fact by a preponderance of the evidence. . . ." She cannot meet that burden by stating that no evidence exists.

Moreover, PECO does not agree that there is an absence of evidence on Ms. Branagh's claims. PECO's expert witnesses, Dr. Davis and Dr. Israel, testified that they had reviewed extensive scientific research on Ms. Branagh's claims, and they concluded that the scientific research does not support her claims. *See, for example*, Tr. 145 (Dr. Davis: ". . . there are very many standard setting bodies that have looked at this in great detail. They have evaluated a vast collection of literature . . ."); Tr. 159 (Dr. Davis: the radio frequency exposures from PECO AMI meters are "incredibly small," being millions of times smaller than the allowable limits set by the standard setting bodies); Tr. 189-191-92, 194-95, 198-201, 211-12 (setting forth examples of the studies Dr. Israel relied upon for his opinion regarding Ms. Branagh's health claims).

D. Reply to Ms. Branagh's Fourth Exception: The Initial Decision properly addressed the claim that there are "medical experts and medical societies who do believe that AMI meters are detrimental to human health"

Ms. Branagh's fourth exception is that the Initial Decision did not correctly analyze her claim that there are some medical experts that support her point of view. She states:

Again from everything I've read the safest meters for human health are analog meters. There are many medical experts and medical societies who do believe that AMI meters are detrimental to human health. I've furnished this information in the hearing.

In her direct testimony, Ms. Branagh referred to a single source for her views regarding "medical experts and medical societies" -- a letter from the American Academy of Environmental Medicine ("AAEM") that claims that the radio frequency exposure guidelines of the Federal Communication Commission "only looked at thermal tissue damage" and are thus "obsolete." Tr. 20.

The Initial Decision (p. 14) refers to this argument (albeit without naming the AAEM): "She further contends that the studies used to 'justify' the installation of smart meters are obsolete and do not address nonthermal aspects of RF exposure. (Tr. 20-21)."

The Initial Decision (p. 15) then correctly sets forth PECO's reply to the AAEM thermal/non-thermal argument, and the claim of FCC obsolescence:

Dr. Davis also specified that there is a distinction between exposure to chemicals that can enter the body and radiofrequency radiation which "cannot create any chemistry in the body and produce any change that's going to cause a health effect unless the levels are so high as to heat you up." (Tr. 160-161). According to Dr. Davis, the exposures from the smart meters at issue are "incredibly tiny" (Tr. 161) and the generally accepted scientific view is that there is no evidence of health effect from exposure to the electromagnetic fields emanating at the frequency found in smart meters (Tr. 167-168).

In addition to the testimony cited above, Dr. Davis also testified that, before the FCC set its standards for radio frequency exposures, it considered the research into both thermal and non-thermal effects – and it concluded that the science on non-thermal effects did not show a need for standards that would protect against claimed, but unproven, non-thermal effects. Moreover, the FCC continues to monitor scientific research on “all possible mechanisms” – thermal and non-thermal – and therefore cannot be considered obsolete. Tr. 146-47.

As to the AAEM letter itself, Dr. Davis testified that it was not written by appropriate experts, it cherry-picked from the science rather than reviewing the whole body of literature, and that the AAEM is “a small group that has some agenda to ban wireless altogether and their opinions are just not generally accepted by the majority of scientists who have looked at this issue.” Tr. 157-59.

In sum, the Initial Decision correctly concluded that the AAEM letter referred to by Ms. Branagh is not sufficient to support her burden of proving, by a preponderance of the evidence, that PECO’s AMI meters have caused, contributed to, or exacerbated, or will cause, contribute to, or exacerbate, any adverse health effects.

E. Reply to Ms. Branagh’s Fifth Exception: The Initial Decision correctly concluded that it is inappropriate to delay installation of an AMI meter at the Branagh residence until 2023, as requested by Ms. Branagh

Ms. Branagh’s fifth exception is that she should be allowed to defer installation of an AMI meter until 2023 so that she can wait and see if the General Assembly chooses to implement an “opt out” in future legislation, and that the Initial Decision incorrectly denies her that opportunity. She states:

On page 19 the report states that I am seeking a postponement of installation, anticipating future legislation that would allow Pa. consumers to opt out.

According to the Act PECO has until 2023 to finish installing these smart meters and therefore it would be perfectly legal to postpone installation at my home until that time.

The Initial Decision addresses this argument (p. 19), correctly stating that “the law can only be applied as it exists,” and noting that it would not be appropriate for the Commission to base its decision in this case on speculation about what the General Assembly might, or might not, do in the future. PECO’s supports the Initial Decision’s analysis of this issue – it is not appropriate to delay installation of an AMI at the Branagh residence based on her hope and speculation that the law requiring such installation will change sometime in the next five years.

In addition, PECO would like to briefly comment on Ms. Branagh’s claim that “[a]ccording to the Act PECO has until 2023 to finish installing these smart meters. . . .” Under Act 129, all major utilities are required to complete their installation of smart meters by 2023 -- but that does not mean that utilities must wait that long, nor does it mean that they are required to continue to offer non-smart meters up to that date.

Rather, Act 129 provides a procedure for determining the timetable of AMI installation by each major jurisdictional electric utility: within nine months of the passage of the Act in 2008, each such utility was required to file with the Commission an “installation plan” for smart meters. 66 Pa. C.S. §2807(f)(1). In PECO’s implementation plan (originally filed with the Commission in 2009, and later supplemented for Phases II and III), it proposed to substantially complete the installation of smart meters in its service territory by the end of 2014, and provided extensive testimony that doing so would be in the public interest. The Commission approved that plan, including the dates for installation of AMI meters in PECO’s service territory. *See* Petition of PECO Energy Company for approval of its Smart Meter Universal Deployment Plan,

Docket No. M-2009-21223944 (Recommended Decision, July 12, 2013, adopted by Commission Order on Aug. 15, 2013.

Moreover, as of this time PECO has accomplished more than “substantial completion” of AMI installation. PECO has deployed over 1.7 million electric AMI meters and over 530,000 gas AMI modules. Tr. 108. PECO still needs to change out the meters for approximately 1,500 inactive residential accounts – a program referred to as “residual deployment” -- Tr. 60, but the only active residential accounts that do not have AMI meters are the 20 or so customers who have formal complaints pending before the Commission. Consequently, the system that allowed PECO to remotely read its last-generation AMR meters was terminated in April 2017. Tr. 60. Moreover, the Universal Deployment teams have been disbanded and the hundreds of personnel that were assigned to accomplish Universal Deployment have been re-assigned to other tasks and functions in the Company. Tr. 118-19.

In other words, neither the Commission nor PECO are required to continue to offer non-smart meters through 2023, and it would be bad policy to require PECO to do so.

III. Conclusion

PECO respectfully submits that the Commission should reject Ms. Branagh’s exceptions and adopt the Initial Decision as written.

Respectfully submitted,



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