



17 North Second Street  
12th Floor  
Harrisburg, PA 17101-1601  
717-731-1970 Main  
717-731-1985 Main Fax  
www.postschell.com

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Devin Ryan

dryan@postschell.com  
717-612-6052 Direct  
717-731-1985 Direct Fax  
File #: 167945

March 28, 2018

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: John Kline v. PPL Electric Utilities Corporation**  
**Docket No. C-2017-2621072**

Dear Secretary Chiavetta:

Enclosed for filing is the Motion in Limine of PPL Electric Utilities Corporation to Exclude the Complainant's Exhibits in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Devin Ryan

DTR/jl  
Enclosures

cc: Honorable Elizabeth Barnes  
Certificate of Service

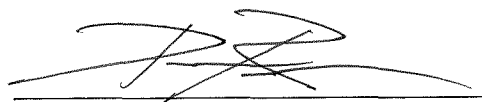
## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

### VIA E-MAIL & OVERNIGHT DELIVERY

John Kline  
5611 Stradford Drive  
Harrisburg, PA 17112  
[Jack.Kline@ecolab.com](mailto:Jack.Kline@ecolab.com)

Date: March 28, 2018



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Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Kline,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2017-2621072
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

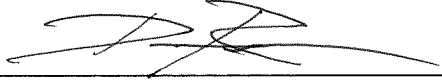
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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), YOU MAY FILE A REPLY TO THE ENCLOSED MOTION WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR REPLY SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR REPLY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

Kimberly A. Klock (ID # 89716)  
Amy E. Hirakis (ID # 310094)  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101  
Phone: 610-774-5696  
Fax: 610-774-4102  
E-mail: [kklock@pplweb.com](mailto:kklock@pplweb.com)  
[aehirakis@pplweb.com](mailto:aehirakis@pplweb.com)



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Devin T. Ryan (ID # 316602)  
Garrett P. Lent (ID # 321566)  
Post & Schell, P.C.  
17 North Second Street, 12th Floor  
Harrisburg, PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: [dryan@postschell.com](mailto:dryan@postschell.com)  
[glent@postschell.com](mailto:glent@postschell.com)

Curtis S. Renner (DC ID # 446187)  
Watson & Renner  
1101 14<sup>th</sup> Street, NW  
Suite 350 - ENS  
Washington, DC 20005  
(202) 737 6302  
[crenner@w-r.com](mailto:crenner@w-r.com)

Date: March 28, 2018

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Kline,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2017-2621072
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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**MOTION IN LIMINE OF  
PPL ELECTRIC UTILITIES CORPORATION TO  
EXCLUDE THE COMPLAINANT’S EXHIBITS**

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**TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:**

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files this Motion in Limine pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code § 5.103 and requests that Administrative Law Judge Elizabeth H. Barnes (the “ALJ”) exclude several exhibits submitted by John Kline (“Complainant”) because they are hearsay and not subject to a hearsay exception under the Pennsylvania Rules of Evidence. Moreover, many of the Complainant’s exhibits also should be excluded because they are irrelevant, lack authenticity, and are inherently unreliable.

In support thereof, the Company states as follows:

**I. BACKGROUND**

1. PPL Electric is a public utility that provides electric distribution and provider of last resort services in Pennsylvania subject to the regulatory jurisdiction of the Commission. PPL Electric furnishes electric distribution, transmission, and provider of last resort electric

supply services to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of 29 counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania.

2. On August 24, 2017, PPL Electric was served with the above-captioned Complaint filed by the Complainant.

3. On September 13, 2017, PPL Electric timely filed an Answer to the Complaint.

4. On October 3, 2017, a Notice was issued scheduling a telephonic evidentiary hearing for January 31, 2018.

5. On October 4, 2017, the ALJ issued the First Prehearing Order, which set forth certain procedural rules in this proceeding.

6. On December 18, 2017, PPL Electric filed a Motion for Admission Pro Hac Vice of Curtis S. Renner, Esquire, as additional counsel on behalf of the Company.

7. On December 21, 2017, PPL Electric filed a letter requesting that the January 31, 2018 hearing be rescheduled for March 29, 2018, because the Company's expert witnesses were unavailable for the hearing on January 31, 2018..

8. On December 22, 2017, the ALJ issued the Second Prehearing Order, which, among other things, rescheduled the evidentiary hearing for March 29, 2018, and directed the parties to exchange all exhibits, reports, and statements by March 15, 2018.

9. On January 8, 2018, the ALJ issued an Interim Order granting the Motion for Admission Pro Hac Vice.

10. On February 14, 2018, PPL Electric filed a Notice and Withdrawal of Appearance.

11. On February 20, 2018, PPL Electric filed a letter requesting that any expert testimony and exhibits be presented in written form in advance of the hearing and exchanged by the parties on or before March 15, 2018.

12. On March 15, 2018, PPL Electric and the Complainant exchanged their exhibits, reports, and statements.

13. On March 26, 2018, the Complainant sent additional exhibits (*i.e.*, proposed Exhibits CCC through FFF) via email to PPL Electric.

14. On March 27, 2018, the Complainant sent additional exhibits (*i.e.*, proposed Exhibits GGG and HHH) via email to PPL Electric.

15. PPL Electric hereby submits this Motion in Limine seeking to exclude the several exhibits submitted by the Complainant because they are hearsay and not subject to a hearsay exception under the Pennsylvania Rules of Evidence and because they are irrelevant, lack authenticity, and are inherently unreliable.

## **II. MOTION IN LIMINE**

16. The Complainant has submitted his intended exhibits in advance of the evidentiary hearing. As summarized below, many of these exhibits should be excluded from the record because they are objectionable on several grounds, including hearsay, relevance, authenticity, and inherent unreliability:

- Exhibit D – Charts purporting to show “Recover Act Selections for Smart Grid Investment Grant Awards – by State.”

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) relevance – the document concerns grants issued to other utilities besides PPL Electric and in other states besides Pennsylvania; (3) authenticity – the document’s authority is not being presented to authenticate the accuracy of the factual statements in the document.

- Exhibit F – A Congressional Research Service report titled “Smart Meter Data: Privacy and Cybersecurity” by Brandon J. Murrill, Edward C. Liu, and Richard M. Thompson II.

Objections: (1) hearsay – the document is written by other individuals and sets forth those persons’ legal opinions about issues related to smart meters; (2) authenticity – the document’s authors are not being presented to authenticate the accuracy of the statements in the document.

- Exhibit K – A document titled “U.S. Constitution > 14<sup>th</sup> Amendment Section,” which sets forth the Equal Protection Clause of the Fourteenth Amendment and contains an excerpt from Cornell Law School’s website summarizing the Equal Protection Clause.

Objections: (1) hearsay – the summary of the Equal Protection Clause is written by another individual that is not the Complainant; (2) relevance – PPL Electric is not a state actor; (3) authenticity – the author of the summary is not being presented to authenticate the accuracy of the statements in the summary.

- Exhibit L – A document titled “International Appeal: Scientists Call for Protection from Non-ionizing Electromagnetic Field Exposure.”

Objections: (1) hearsay opinions about medical and scientific issues; (2) relevance – the proposed exhibit does not address RF fields from the AMI meters being used by PPL Electric; (3) inherently unreliable – the proposed exhibit is an online petition that represents opinions by anti-EMF/RF advocates, not scientific information; (4) authenticity – the document’s authors are not being presented to authenticate the accuracy of the statements in the document.

- Exhibit M – “NTP Technical Report on the Toxicology and Carcinogenesis Studies in B6C3F1/N Mice Exposed to Whole-body Radio Frequency Radiation at a Frequency (1,900 MHz) and Modulations (GSM and CDMA) Used by Cell Phones”

Objections: (1) hearsay opinions about medical and scientific issues; (2) relevance – the proposed exhibit concerns RF fields from cell phones and does not address RF fields from the AMI meters being used by PPL Electric; (3) authenticity – the document’s authors are not being presented to authenticate the accuracy of the statements in the document. Moreover, document is stamped “DRAFT” and “NOT FOR ATTRIBUTION” and states on its cover that “This DRAFT Technical Report is distributed solely for the purpose of predissemination peer review under the applicable information quality guidelines. It has not been formally disseminated by the NTP. It does not represent and should not be construed to represent NTP determination or policy.” (emphasis added)

- Exhibit N1 – August 29, 2013 Letter sent by the American Academy of Pediatrics to the Federal Communications Commission and the U.S. Food and Drug Administration.

Objections: (1) hearsay opinions about medical and scientific issues; (2) relevance – the proposed exhibit addresses RF fields from cell phones and does not address RF fields from the AMI meters being used by PPL Electric; (3) authenticity – the document’s authors are not being presented to authenticate the accuracy of the statements in the document.

- Exhibit N2 – A two-page document titled “The American Academy of Pediatrics Recommendations about Cell Phones, Cell Towers and Wireless” by Environmental Health Trust.

Objections: (1) hearsay opinions about medical and scientific issues; (2) hearsay within hearsay where the document presents quotes from or opinions of third-parties; (3) relevance – the proposed exhibit concerns RF fields from cell phones and does not address RF fields from the AMI meters being used by PPL Electric; (4) authenticity – the document’s authors are not being presented to authenticate the accuracy of the statements in the document. (5) inherently unreliable – this is a document prepared by the activist group Environmental Health Trust to look like a document from the American Academy on Pediatrics (“AAP”), but it is not an AAP document.

- Exhibit O – Oklahoma House Bill 2872 of 2018

Objection: (1) relevance – proposed legislation in Oklahoma that has not been passed by the Oklahoma legislature and has no bearing on Pennsylvania law.

- Exhibit P – Letters from Frank Marcinowski and Norbert Hankin of the United States Environmental Protection Agency’s (“EPA”) Radiation Protection Division sent to Janet Newton of The EMR Network in 2002.

Objections: (1) hearsay – the letters were not written by the Complainant and are being submitted for the truth of the matter asserted; (2) hearsay within hearsay where the documents characterize the opinions and view of third parties, including the opinion of an EPA staffer purporting to provide an opinion about the scope of the FCC’s standard; (3) authenticity – the documents’ authors are not being presented to authenticate the accuracy of the statements in the document.

- Exhibit Q – A document titled “Peer-reviewed scientific studies on EMF related subjects” by an unknown author.

Objections: (1) hearsay opinions about medical and scientific issues from unknown and/or multiple authors; (2) authenticity – the proposed exhibit is a composite of selected portions of abstracts from multiple sources and authors, portions of which have been altered from the originals; (3) relevance – the proposed exhibit does not address RF fields from AMI meters used by PPL Electric; (4) relevance – the proposed exhibit addresses health and other conditions other than those alleged by Complainant.

- Exhibit R – A document titled “Bibliography of Reported Biological Phenomena (‘Effects’) and Clinical Manifestations Attributed to Microwave and Radio-frequency Radiation” by the Naval Medical Research Institute, dated October 4, 1971.

Objections: (1) hearsay opinions about medical and scientific issues; (2) relevance – the proposed exhibit does not address RF fields from AMI meters used by PPL Electric; (3) authenticity – the document’s authors are not being presented to authenticate the accuracy of the statements in the document.

- Exhibit T – An article title “EUROPAEM EMF Guideline 2016 for the prevention diagnosis and treatment of EMF-related health problems and illnesses” by Igor Belyaev, et al.

Objections: (1) hearsay opinions about medical and scientific issues; (2) relevance – the proposed exhibit addresses health conditions other than those alleged by Complainant; (3) authenticity – the document’s author is not being presented to authenticate the accuracy of the statements in the document. The document has been altered from the original.

- Exhibit X – A webpage on landisgyr.com providing an overview of the company’s services.

Objections: (1) hearsay – the statements on the webpage were not written by the Complainant and are being submitted for the truth of the matter asserted; (2) relevance; (3) authenticity – the author or authors of these statements on the webpage are not being presented to authenticate the accuracy of the statements.

- Exhibit Y – A chapter about Section 5 of the Federal Trade Commission Act from the *Consumer Compliance Handbook*.

Objections: (1) hearsay – the statements on the webpage were not written by the Complainant and are being submitted for the truth of the matter asserted; (2) relevance – there is no claim that PPL Electric has violated the Federal Trade Commission Act and even if there were, the Commission does not have jurisdiction over such a claim; (3) authenticity – the author or authors of these statements on the webpage are not being presented to authenticate the accuracy of the statements.

- Exhibit Z – An article from statnews.com by Bob Tedeschi titled “With patients demanding experimental drugs, ‘right to try’ is becoming the law of the land,” dated March 23, 2017.

Objections: (1) hearsay – the article was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay within hearsay where the document presents quotes from or opinions of third-parties; (3) relevance – the article concerns “right to try” experimental drugs and has nothing to do with PPL Electric or its AMI meters; (4) authenticity – the author or authors

of these statements in the article are not being presented to authenticate the accuracy of the statements.

- Exhibit AA – A letter purportedly sent by Robert Godshall to Teresa Roh, dated June 12, 2017.

Objections: (1) hearsay – the letter was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay within hearsay where the document presents quotes from or opinions of third-parties; (3) authenticity – the author of this letter is not being presented to authenticate the accuracy of the statements in the letter.

- Exhibit BB – A webpage URL of <https://votesmart.org/candidate/campaign-finance/9143/robert-godshall#> purporting to show Robert Godshell’s campaign finances.

Objections: (1) hearsay – the webpage was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) relevance – the webpage concerns Robert Godshall’s campaign finances and has nothing to do with PPL Electric’s AMI meters or the issues properly before the Commission; (3) authenticity – the author of this webpage is not being presented to authenticate the accuracy of the information on the webpage.

- Exhibit FF – A document by an unknown author listing the docket numbers of various complaints before the Commission and characterizing the complaints.

Objections: (1) hearsay within hearsay where the document presents statements from or opinions of third-parties; (2) relevance – the instant proceeding solely concerns the Complainant’s Complaint against PPL Electric, not any other customer’s complaint against the Company or any other electric utility, and the Complainant is not authorized to represent these other customers; (3) relevance – some of the complaint dockets listed are unrelated to PPL Electric’s AMI meter installations; (4) authenticity – the persons who filed these complaints are not being presented to authenticate the accuracy of their statements in those complaints.

- Exhibit HH – A document titled “Stopping the Next Breach: Why a Non-Proprietary, Standards-Based Solution is the Best Approach” by Michael Demeter and Stephen Chasko, dated December 2017

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) relevance; (3) authenticity – the author of this document is not being presented to authenticate the accuracy of the statements contained therein.

- Exhibit II – Technical manual by Landis + Gyr about their E330 FOCUS AX, E350 FOCUS AX-SD, E331 FOCUS Axe, E351 FOCUS AXe-SD meters, dated April 15, 2014.

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) authenticity – the author of this document is not being presented to authenticate the accuracy of the statements contained therein.

- Exhibit JJ – A February 7, 2014 letter and enclosed document sent by Willie R. Taylor from the Office of Secretary, United States Department of the Interior, to Eli Veenendaal at the U.S. Department of Commerce about the impact of communication towers on migratory birds.

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay opinions about medical and scientific issues; (3) relevance; (4) authenticity – the document’s author is not being presented to authenticate the accuracy of the statements in the document.

- Exhibit SS – An E-newsletter from Michigan State Senator Patrick Colbeck about “Inappropriate Power Shut-off Notices in the 7<sup>th</sup> District.”

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay within hearsay; (3) relevance – the document has nothing to do with Pennsylvania or PPL Electric; (4) authenticity – the document’s author is not being presented to authenticate the accuracy of the statements in the document.

- Exhibit TT – “Dirty electricity, chronic stress, neurotransmitters and disease” by Samuel Milham and David Stetzer, dated January 16, 2013.

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay opinions about scientific and medical issues; (3) authenticity – the document’s authors are not being presented to authenticate the accuracy of the statements in the document. This is not the as-published version of this document.

- Exhibit UU – Letters about “EMFs, the Birds and the Bees, and the Canadian Environmental Assessment Processes Review” sent by Margaret Friesen.

Objections: (1) hearsay – the letters were not written by the Complainant and are being submitted for the truth of the matter asserted; (2) hearsay opinions about medical and scientific issues; (3) relevance – the document addresses alleged effects on birds and honey bees, which are not issues in this proceeding; (4) authenticity – the documents’ author is not being presented to authenticate the accuracy of the statements in the document.

- Exhibit VV – “Possible Effects of Electromagnetic Fields from Phone Masts on a Population of White Stork” by Alfonso Balmori.

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay opinions about medical and scientific issues; (3) relevance – the document addresses alleged effects on wild stork populations, which is not an issue in this proceeding; (4) authenticity – the document’s authors are not being presented to authenticate the accuracy of the statements in the document.

- Exhibit WW – An article titled “Radiofrequency EMFs and Health Risks: Section 6 Animals, Birds, Insects and Plants” by Alasdair and Jean Philips, dated June 7, 2017.

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay opinions about medical and scientific issues; (3) relevance – the document addresses alleged effects on animals, insects and plants, which are not issues in this proceeding; (4) relevance – the document does not address RF from the AMI meters being used by PPL Electric; (5) authenticity – the document’s authors are not being presented to authenticate the accuracy of the statements in the document.

- Exhibit XX – An article titled “Two-alarm fire severely damages Walnut Street home” by Daniel Walmer, dated March 3, 2018.

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay within hearsay; (3) relevance; (4) authenticity – the document’s author is not being presented to authenticate the accuracy of the statements in the document.

- Exhibit YY – A document by an unknown author about reports of fires, electric problems, and other issues allegedly caused by smart meters.

Objections: (1) hearsay – the document contains statements not made by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay within hearsay; (3) relevance; (4) authenticity – the declarants of the various statements in the document are not being presented to authenticate the accuracy of those statements; (5) inherent unreliability – the document contains only selected excerpts from various articles and activist websites.

- Exhibit ZZ – An article titled “The Firefighters Wake Up Call to Us All” by Susan Foster.

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay within hearsay; (3) relevance; (4) authenticity – the document’s author is not being presented to authenticate the accuracy of the statements in the document.

- Exhibit AAA – A copy of a webpage from the Federal Aviation Administration titled “What’s the only word that means mandatory? Here’s what the law and policy say about ‘shall, will, may and must.’”

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay legal opinion; (3) relevance; (4) authenticity – the document’s author is not being presented to authenticate the accuracy of the statements in the document.

- Exhibit CCC – A document titled “A review on Electromagnetic fields (EMFs) and the reproductive system,” by Ali Asghari, et al, dated July 2016.

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay opinions about medical and scientific issues; (3) relevance – the proposed exhibit does not address RF fields from the AMI meter being used by PPL Electric; (4) authenticity – the document’s authors are not being presented to authenticate the accuracy of the statements in the document.

- Exhibit EEE – A document titled “Exposure and Testing Requirements for Mobile Phones Should Be Reassessed” dated July 2012 by the Government Accountability Office.

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay opinions about medical and scientific issues; (3) relevance; (4) authenticity – the document’s authors are not being presented to authenticate the accuracy of the statements in the document.

- Exhibit FFF – A document containing excerpts from a United States Computer Emergency Readiness Team (“US-CERT”) webpage.

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay opinions about data privacy issues; (3) relevance; (4) authenticity – the document’s authors are not being presented to authenticate the accuracy of the statements in the document; (5) inherent unreliability – the document appears to be selected portions copied from a US-CERT webpage and not an official, full copy.

- Exhibit GGG – A press advisory titled “The American Academy of Environmental Medicine Calls for Immediate Caution regarding Smart Meter Installation,” dated April 12, 2012.

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay opinions about medical and scientific issues; (3) relevance; (4) authenticity – the document’s

authors are not being presented to authenticate the accuracy of the statements in the document.

- Exhibit HHH – A document titled “Why children absorb more microwave radiation than adults: The consequences,” by L. Lloyd Morgan, Santosh Kesari, and Devra Lee Davis.

Objections: (1) hearsay – the document was not written by the Complainant and is being submitted for the truth of the matter asserted; (2) hearsay opinions about medical and scientific issues; (3) relevance; (4) authenticity – the document’s authors are not being presented to authenticate the accuracy of the statements in the document.

**A. THE COMPLAINANT HAS SUBMITTED EXHIBITS THAT SHOULD BE EXCLUDED BECAUSE THEY ARE HEARSAY**

17. The Complainant has submitted exhibits that should be excluded from the record in this proceeding because they are hearsay statements<sup>1</sup> and not subject to a hearsay exception. Specifically, these exhibits are proposed Exhibits D, F, K through N2, P through R, T, X through Z, AA, BB, FF, HH JJ, SS through ZZ, and AAA, CCC, and EEE through HHH.

18. These exhibits are hearsay because they are out of court statements being offered for the truth of the matter asserted. The exhibits were not written by the Complainant or contain statements not made by the Complainant, such as various documents, reports, articles, excerpts of articles, abstracts of articles and studies, press releases, and letters. (See Complainant’s

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<sup>1</sup> Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Pa.R.E. 801; *Bonegre v. Workers’ Compensation Appeal Board (Bertolini’s)*, 863 A.2d 68, 72 (Pa. Cmwlth. 2004). Ordinarily, hearsay evidence is inadmissible unless some exception applies. Pa.R.E. 802. The hearsay rule is somewhat relaxed in proceedings before administrative agencies. *Rox Coal Co. v. Workers’ Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002). The Commonwealth Court established what is commonly called the “Walker Rule” to apply to the use of hearsay evidence during administrative proceedings:

(1) Hearsay evidence, properly objected to, is not competent evidence to support a finding;

(2) Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding, if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand.

*Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976). The “Walker Rule” has been affirmed by the Pennsylvania Supreme Court. *Rox Coal Co. v. Workers’ Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002).

Proposed Exhibits D, F, K through N2, P through R, T, X through Z, AA, BB, FF, HH JJ, SS through ZZ, and AAA, CCC, and EEE through HHH) Indeed, many of the proposed exhibits are hearsay within hearsay, because the documents purport to quote from and/or characterize the views of third-parties. Moreover, the Complainant represented in discovery that he is not calling any witnesses,<sup>2</sup> such as the authors of these various materials, to testify at the hearing and authenticate the statements therein. Therefore, these exhibits are out of court statements.

19. Further, the Complainant is submitting the exhibits to prove the truth of the matter asserted therein. The Complainant is planning to use these exhibits to demonstrate that PPL Electric's new AMI meter is a health, safety, and fire hazard, that the AMI meter and associated infrastructure allegedly do not protect the Complainant's data and privacy, and that the Complainant will suffer alleged health effects if the new AMI meter is installed.

20. Thus, these materials are hearsay statements and are inadmissible unless subject to a hearsay exception. *See* note 1, *supra*.

21. An exception to the hearsay rule is that an expert may express an opinion that is based on material not in evidence, including other expert opinions, where such material is of a type customarily relied on by experts in his or her profession. *See Lower Makefield Twp. v. Lands of Dalgewicz*, 4 A.3d 1114, 1122 (Pa. Cmwlth. 2010), *affirmed*, 67 A.3d 772 (Pa. 2013); *Collins v. Cooper*, 746 A.2d 615, 618 (Pa. Super. 2000); *Primavera v. Celotex Corp.*, 608 A.2d 515, 520-21 (Pa. Super. 1992); Pa.R.E. 703.<sup>3</sup>

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<sup>2</sup> A true and correct copy of the Complainant's discovery response is attached hereto as **Appendix A**.

<sup>3</sup> An expert may base his or her opinion on facts made known to the expert; "[t]hat those facts were in part hearsay does not invalidate the expert's opinion. *See Steinhauer v. Wilson*, 485 A.2d 477, 479 (Pa. Super. 1984). However, Pennsylvania Rule of Evidence 705 requires an expert to disclose to the fact-finder the facts or data on which the opinion is based. Pa.R.E. 705 ("If an expert states an opinion the expert must state the facts or data on which the opinion is based.").

22. Here, however, the Complainant represented in discovery that he is not calling any expert witnesses.<sup>4</sup> Therefore, none of these materials will be used form the basis of any expert witnesses' opinions.

23. The Complainant cannot rely on these materials to form his own opinion. The Complainant is not a medical or scientific expert and cannot rely upon these materials as a basis for forming and offering opinions about medical or scientific issues. *See* Pa.R.E. 702. "The test to be applied when qualifying an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation." *Miller v. Brass Rail Tavern*, 664 A.2d 525, 528 (Pa. 1995). Nothing submitted by the Complainant attests that he is an expert in any of the fields relevant to the subject matters of physics, biophysics, chemistry, electrical engineering, electromagnetics, bioelectromagnetics, radio-frequency bioelectromagnetics and dosimetry, medicine, fire safety, or law.

24. Finally, even if these materials are allowed to form the basis of the Complainant's opinion or any expert's opinion, these materials cannot be submitted into the record. *See Klein v. Aronchick*, 85 A.3d 487, 503-04 (Pa. Super. 2014) (citing *Aldridge v. Edmunds*, 750 A.2d 292, 297-98 (Pa. 2000)). Although hearsay statements, such as articles, studies, and treatises, can be relied upon by expert witnesses in forming their opinions, the substance of those hearsay statements is not permitted to be entered into the record to prove the truth of the matter asserted. *See id.*; *Nigro v. Remington Arms Co.*, 637 A.2d 983, 993 (Pa. Super. 1993) (citations omitted). As explained previously, the Complainant is offering all of these materials to prove the truth of the matter asserted. Thus, even if the Complainant is permitted to offer expert opinions in areas

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<sup>4</sup> A true and correct copy of the Complainant's discovery response is attached hereto as **Appendix B**.

beyond his expertise and rely on these materials in forming the basis of his opinions, the proposed exhibits cannot be admitted into the record in this proceeding.

25. For these reasons, the Complainant's proposed Exhibits D, F, K through N2, P through R, T, X through Z, AA, BB, FF, HH JJ, SS through ZZ, and AAA, CCC, and EEE through HHH should be excluded from the record. If not, PPL Electric's due process rights would be violated because the Company would be denied the opportunity to cross-examine the individuals who actually authored these materials and statements.

**B. MANY OF THE COMPLAINANT'S EXHIBITS SHOULD OTHERWISE BE EXCLUDED BECAUSE THEY ARE IRRELEVANT, LACK AUTHENTICITY, AND INHERENTLY UNRELIABLE**

26. As noted above, many of Complainant's proposed exhibits also are inadmissible due to other significant flaws, including relevance,<sup>5</sup> authenticity,<sup>6</sup> and inherent unreliability.<sup>7</sup>

27. First, the contents of many of the proposed exhibits are irrelevant because they:

- (a) address exposures other than the RF fields from the AMI meters being used by PPL Electric;
- (b) address health conditions other than the one raised by Complainant; and/or (c) do not address issues relevant to the installation of AMI meters in Pennsylvania (see Complainant's Proposed

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<sup>5</sup> See Pa.R.E. 401 ("Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action."); *Ecker v. Amtrak*, 2015 Phila. Ct. Com. Pl. LEXIS 98 (Mar. 13, 2015), *affirmed*, 2015 Pa. Super. Unpub. LEXIS 3615 (Pa. Super. 2015); *Parr v. Ford Motor Co.*, 109 A.3d 682 (Pa. Super. 2014), *appeal denied*, 2015 Pa. LEXIS 1150 (Pa. 2015). Even if evidence is relevant, such evidence may be excluded "if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." *Parr*, 109 A.3d at 697 (quoting Pa.R.E. 403).

<sup>6</sup> See Pa.R.E. 901(a) ("To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is."). Indeed, "[w]hen a party offers evidence contending either expressly or impliedly that the evidence is connected with a person, place, thing, or event, the party must provide evidence sufficient to support a finding of the contended connection." Pa.R.E. 901, cmt. (citing *Commonwealth v. Hudson*, 414 A.2d 1381 (Pa. 1980); *Commonwealth v. Pollock*, 606 A.2d 500 (Pa. Super. 1992)).

<sup>7</sup> See *Blum v. Merrell Dow Pharms., Inc.*, 705 A.2d 1314, 1325 (Pa. Super. 1997) (excluding expert testimony because the "analysis was so flawed as to render [the expert's] conclusions unreliable and therefore inadmissible"), *affirmed*, 764 A.2d 1 (Pa. 2000).

Exhibits D, K, through O, Q through Z, BB, FF, HH, JJ, SS, UU, XX, YY, ZZ, AAA, CCC, and EEE through FFF).

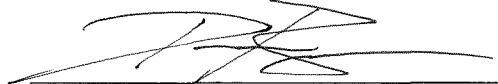
28. Second, many of the Complainant's proposed exhibits lack authenticity, are inherently unreliable, or both because: (a) the authors are not being presented to authenticate their statements; (b) they are incomplete extracts or portions of other documents; (c) are composites of documents from multiple sources and different authors, or unknown authors; and/or (d) have been reworded or "doctored" to alter the content of the document they purport to be (see Complainant Proposed Exhibits D, F, K through N2, P through R, T, X through Z, AA, BB, FF, HH through through JJ, SS through ZZ, AAA, CCC, and EEE through HHH). Indeed, some of the exhibits have no identified author or source, or where the source of a proposed exhibit can be determined, some of those documents were downloaded from the websites of anti-EMF/RF advocacy groups (see Complainant Proposed Exhibits L, YY, and FFF). These types of anonymous and advocacy materials cannot be relied on as providing reliable and balanced statements about medical and scientific issues.

29. For these reasons, the Complainant's exhibits should be excluded because they are irrelevant, lack authenticity, and are inherently unreliable.

**III. CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge Elizabeth H. Barnes grant this Motion in Limine and exclude the Complainant's proposed exhibits from the evidentiary record in this proceeding, as explained above.

Respectfully submitted,



Kimberly A. Klock (ID # 89716)  
Amy E. Hirakis (ID # 310094)  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101  
Phone: 610-774-5696  
Fax: 610-774-4102  
E-mail: [kklock@pplweb.com](mailto:kklock@pplweb.com)  
[aehirakis@pplweb.com](mailto:aehirakis@pplweb.com)

Devin T. Ryan (ID # 316602)  
Garrett P. Lent (ID # 321566)  
Post & Schell, P.C.  
17 North Second Street, 12th Floor  
Harrisburg, PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: [dryan@postschell.com](mailto:dryan@postschell.com)  
[glent@postschell.com](mailto:glent@postschell.com)

Curtis S. Renner (DC ID # 446187)  
Watson & Renner  
1101 14<sup>th</sup> Street, NW  
Suite 350 - ENS  
Washington, DC 20005  
(202) 737 6302  
[crenner@w-r.com](mailto:crenner@w-r.com)

Date: March 28, 2018

Attorneys for PPL Electric Utilities Corporation

# **APPENDIX “A”**

PPL to Complainant-1-5

- Please identify each person you plan to call as a fact witness in this proceeding. For each person, please:

- (a) Provide the person's name, home and business address, background, and qualifications;
- (b) Explain in detail the subject matter(s) on which the witness is expected to testify; and
- (c) Provide the source(s) of information relied upon or referenced by the witness.

Answer

- No witnesses scheduled at this time.

# **APPENDIX “B”**

**PPL to Complainant-1-6**

- Please identify each person you plan to call as a expert witness in this proceeding. For each person, please:
  - (a) Provide the person's name, home and business address, background, and qualifications;
  - (b) Explain in detail the subject manner(s) on which the witness is expected to testify; and
  - (c) Provide the source(s) of information relied upon or referenced by the witness.
  - (d) Provide a copy of the expert witness's current curriculum vitae

**Answer**

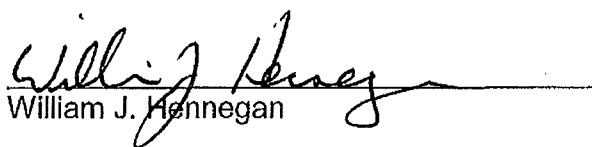
- No witnesses scheduled at this time.

**VERIFICATION**

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF LEHIGH

I, William J. Hennegan, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

  
William J. Hennegan