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April 27, 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: J. Jude Bervinchak v. PPL Electric Utilities Corporation
Docket No. C-2016-2577527**

**Donna Bervinchak v. PPL Electric Utilities Corporation
Docket No. C-2016-2572824**

Dear Secretary Chiavetta:

Enclosed for filing is the Main Brief of PPL Electric Utilities Corporation 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).

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Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

J. Jude Bervinchak :
 :
 v. : Docket No. C-2016-2577527
 :
 PPL Electric Utilities Corporation :

Donna Bervinchak :
 :
 v. : Docket No. C-2016-2572824
 :
 PPL Electric Utilities Corporation :

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I. INTRODUCTION

The instant proceeding concerns two consolidated Formal Complaints filed by Donna Bervinchak and J. Jude Bervinchak (collectively, “Complainants”) with the Pennsylvania Public Utility Commission (“Commission”). PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) was served with Donna Bervinchak’s Formal Complaint on October 26, 2016, and was served with J. Jude Bervinchak’s Formal Complaint on November 29, 2016. The two proceedings were consolidated because they concern challenges to PPL Electric’s planned installation of a new automated metering infrastructure (“AMI”) meter at J. Jude Bervinchak’s property (*i.e.*, 825 Christine Lane, Lancaster, Pennsylvania), where both of the Complainants currently reside.

As explained in this Main Brief, the Complainants have failed to sustain their burden of proof that installing the new AMI meter on the Complainants’ premises would constitute a violation of the Public Utility Code or any Commission regulation or order. Furthermore, contrary to the Complainants’ allegations, the Commission has exclusive jurisdiction over the issues raised in this proceeding related to PPL Electric’s facilities. Therefore, the Commission should dismiss both of the Complaints in their entirety and with prejudice.

II. STATEMENT OF THE CASE

On October 26, 2016, PPL Electric was served with the Formal Complaint filed by Donna Bervinchak.

On November 15, 2016, the Company filed an Answer and Preliminary Objections to Donna Bervinchak’s Complaint.

On November 29, 2016, the Company was served with the Formal Complaint filed by J. Jude Bervinchak.

On December 19, 2016, the Company filed an Answer and Preliminary Objections to J. Jude Bervinchak's Complaint.

On May 17, 2017, Notices were issued assigning Administrative Law Judge Elizabeth H. Barnes (the "ALJ") to rule on the Company's Preliminary Objections.

On May 25, 2017, PPL Electric filed Amended Preliminary Objections to Donna Bervinchak's Complaint. The Company also filed Notices of Appearance of Amy E. Hirakis, Esquire, as additional counsel in both the Donna and J. Jude Bervinchak proceedings.

Later on May 25, 2017, PPL Electric was served with the ALJ's Orders Denying Preliminary Objections in both the Donna and J. Jude Bervinchak proceedings.

On May 26, 2017, Notices were issued scheduling a telephonic hearing in the Donna Bervinchak proceeding for August 1, 2017, at 10:00 AM, and a telephonic hearing in the J. Jude Bervinchak proceeding for August 1, 2017, at 2:00 PM.

On May 30, 2017, the ALJ issued Prehearing Orders setting forth certain rules and requirements for the proceedings. Moreover, the ALJ's Prehearing Order in the Donna Bervinchak matter denied the Company's Amended Preliminary Objections.

On July 7, 2017, Notices were issued re-scheduling the telephonic hearing in the Donna Bervinchak proceeding for October 3, 2017, at 10:00 AM, and the telephonic hearing in the J. Jude Bervinchak proceeding for October 3, 2017, at 2:00 PM.

On July 25, 2017, the ALJ issued the Second Prehearing Orders in both proceedings.

On September 6, 2017, Donna Bervinchak filed a "Notice of Default" seeking summary relief.

On September 21, 2017, PPL Electric filed letters in both proceedings requesting that the hearings be rescheduled.

On September 27, 2017, Notices were issued re-scheduling the telephonic hearing in the Donna Bervinchak proceeding for January 30, 2018, at 10:00 AM, and the telephonic hearing in the J. Jude Bervinchak proceeding for January 30, 2018, at 2:00 PM.

On September 29, 2017, PPL Electric filed an Answer to Donna Bervinchak's "Notice of Default," which the Company treated as a Motion for Summary Judgment.

On October 3, 2017, the ALJ issued an Order Denying Donna Bervinchak's Motion for Default and/or Summary Judgment.

The ALJ issued the Third Prehearing Orders in the Donna Bervinchak and J. Jude Bervinchak proceedings on October 3, 2017, and October 4, 2017, respectively.

On December 18, 2017, PPL Electric filed Motions to admit Curtis S. Renner, Esquire, *pro hac vice* and represent the Company as additional counsel.

On December 21, 2017, PPL Electric filed a letter in the Donna Bervinchak proceeding requesting that the hearing be rescheduled for March 8, 2018.

On December 22, 2017, the ALJ issued the Fourth Prehearing Order in the Donna Bervinchak proceeding.

On January 3, 2018, a Notice was issued re-scheduling the telephonic hearing in the Donna Bervinchak proceeding for March 8, 2018, at 10:00 AM.

On January 4, 2018, PPL Electric filed a letter in the J. Jude Bervinchak proceeding requesting that the hearing be rescheduled for March 23, 2018.

On January 5, 2018, the ALJ issued the Fourth Prehearing Order in the J. Jude Bervinchak proceeding.

On January 12, 2018, a Notice was issued re-scheduling the telephonic hearing in the J. Jude Bervinchak proceeding for March 23, 2018, at 10:00 AM.

On January 8, 2018, the ALJ issued an Interim Order admitting Curtis S. Renner, Esquire, *pro hac vice*.

On January 29, 2018, PPL Electric filed letters requesting that all expert witnesses submit written direct testimony in the Donna Bervinchak proceeding on or before February 15, 2018, and in the J. Jude Bervinchak proceeding on or before February 28, 2018, which were the due dates established by the ALJ for the parties to exchange their exhibits, reports, and statements.

On January 31, 2018, PPL Electric filed a Motion to Compel responses to discovery in the Donna Bervinchak proceeding.

On February 8, 2018, PPL Electric filed a Motion to Compel responses to discovery in the J. Jude Bervinchak proceeding.

On February 9, 2018, Donna Bervinchak filed a letter in response to the Motion to Compel and filed a “Notice of Move,” indicating that she had moved into J. Jude Bervinchak’s residence located at 825 Christine Lane, Lancaster, Pennsylvania.

On February 14, 2018, PPL Electric filed Notices in both proceedings to enter the appearance of Garrett P. Lent, Esquire, and to withdraw the appearance of Christopher T. Wright, Esquire, as counsel on behalf of PPL Electric.

On February 15, 2018, PPL Electric served its potential hearing exhibits and its written direct expert testimony and exhibits in the Donna Bervinchak proceeding.

On February 20, 2018, PPL Electric filed a Motion to Consolidate the Donna and J. Jude Bervinchak proceedings because, as a result of Donna Bervinchak moving into J. Jude Bervinchak’s residence, both proceedings concerned the planned installation of a new AMI meter at the same location.

On February 15, 2018, PPL Electric served its potential hearing exhibits and its written direct expert testimony and exhibits in the J. Jude Bervinchak proceeding.

On March 1, 2018, the ALJ issued an Interim Order consolidating the Donna and J. Jude Bervinchak proceedings.

On March 9, 2018, a corrected Notice was issued scheduling the evidentiary hearing in the consolidated proceedings for March 23, 2018, at 10:00 AM.

The Complainants never answered the Company's discovery, and the ALJ did not rule on the Company's Motions to Compel.

On March 23, 2018, a telephonic evidentiary hearing was held as scheduled in the consolidated proceeding. Further, the ALJ issued a Briefing Order setting forth requirements for the briefs to be submitted in this proceeding.

III. QUESTIONS PRESENTED

1. Whether the Complainants have failed to sustain their burden of proof that PPL Electric's installation of a new AMI meter at their premises would violate the Public Utility Code, a Commission order, or a Commission regulation.

Suggested answer: *in the affirmative.*

2. Whether the Commission has exclusive jurisdiction over the issues concerning the installation of PPL Electric's new AMI meter.

Suggested answer: *in the affirmative.*

IV. LEGAL STANDARDS

A. BURDEN OF PROOF

Under Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. *See Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); *see also Dist. of Columbia’s Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or*

Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence Cnty., Pa., Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).¹

In addition, a person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, “taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive.” *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Cntys.*, 1992 Pa. PUC Lexis 160, at *210-11 (June 29, 1992) (Initial Decision) (“*Woodbourne-Heaton*”). Rather, the person must demonstrate by a preponderance of the evidence that such exposure actually causes adverse health effects. *Id.* at *211. Specifically, in AMI meter-related matters, the Commission has held that “[t]he Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Order entered Sept. 3, 2015); *see also Romeo v. Pa. PUC*, 154 A.3d 422, 429 (Pa. Cmwlth. 2017) (finding that the smart meter complainant should have a hearing to try to prove his claim through “the testimony of others as well as other evidence that goes to that issue”).

¹ In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 n.9 (Pa. Cmwlth. 2008) (citation omitted). Although substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

B. APPLICABLE LEGAL STANDARDS

Section 701 of the Public Utility Code provides that “any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa. C.S. § 701. Therefore, a complainant must generally demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order.

Section 1501 of the Public Utility Code states, in pertinent part, that:

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. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. . . .

Id. § 1501. The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

When presented with a challenge to an AMI meter installation, the Commission has pronounced that “[t]he ALJ’s role . . . will be to determine based on the record in this particular case, whether there is sufficient evidence to support a finding that the Complainant was adversely affected by the smart meter or whether [the utility’s] use of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances in

this case.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 23 (Order entered Jan. 28, 2016) (citing *Woodbourne-Heaton*, 1992 Pa. PUC Lexis 160, at *12-13).

V. SUMMARY OF ARGUMENT

The Complaints should be denied in their entirety and with prejudice because the Complainants have failed to sustain their burden of proof that installing the new AMI meter would violate the Public Utility Code or any Commission regulation or order.

PPL Electric is legally required to install new AMI meters for all of its customers in accordance with Act 129 and Commission orders. The type of meter currently installed on the Complainants’ property was declared by the Commission not to be compliant with Act 129 and the Commission’s *Smart Meter Implementation Order*. Further, nothing in Act 129, the Commission’s orders, or PPL Electric’s Commission-approved Smart Meter Plan allows a customer to “opt-out” of the new AMI meter.

In addition, installing the new AMI meter would not constitute unsafe and unreasonable service. First, the Complainants have failed to demonstrate that the new AMI meter causes, contributes to, or exacerbates an illness. The Complainants did not present any expert medical or scientific testimony to support their claims that the AMI meters present a risk to human health generally or to them specifically. The Complainants submitted a number of hearsay documents as exhibits to try to prove that the new AMI meters cause adverse health effects, but those documents are not credible evidence in support of their claims. None of them can support a finding of fact in this case because they were properly objected to by the Company as hearsay offered for the truth asserted therein, and they are unreliable and lack scientific merit. Second, the Company’s expert witnesses offered thorough and persuasive testimony that: (1) there is no reliable scientific basis to conclude that very low, non-thermal levels of Radio Frequency (“RF”)

fields from the Company's meters can or will cause any biological effects; and (2) there is no reliable medical basis to conclude that RF fields from the AMI meters cause, contribute to, or exacerbate any disease, symptoms or illness alleged by the Complainants. Indeed, the levels of RF fields from the AMI meters being used by PPL Electric are 98,000 times lower than the levels of RF fields the Federal Communications Commission ("FCC") has designated as safe for long-term public exposures

Third, the Complainants have failed to show that the new AMI meter is otherwise unsafe and would cause fires. The meter can withstand higher temperatures and has alarms designed to alert the Company if the meter's temperature reaches a certain level. Therefore, the new AMI meter can actually help prevent fires.

Fourth, any privacy concerns about the new AMI meter are unfounded. Through the new AMI meter, PPL Electric only collects the electric usage data required by Act 129 and the Commission's orders and about significant events, such as outages, voltage, heat alarms, and meter tampering alerts. Moreover, PPL Electric takes several actions to protect customers' data from public disclosure, such as encrypting the data and ensuring that appropriate firewalls are in place.

Fifth, PPL Electric has a legal right to access the property to install the new AMI meter. Both the Commission's regulations and PPL Electric's Commission-approved tariff, which has the force and effect of law, grant the Company this right. Therefore, the Company would not be trespassing on the property when it installs the new AMI meter, as alleged by the Complainants.

Finally, contrary to the Complainants' claims, the Commission has jurisdiction over the issues concerning the installation of PPL Electric's new AMI meters. Not only did the Complainants file their Formal Complaints with the Commission, but it is well-established that

the Commission has exclusive jurisdiction over issues relating to public utilities' services and facilities.

For these reasons, and as further explained in detail below, the Commission should deny the Complaints with prejudice.

VI. ARGUMENT

A. BACKGROUND

On November 14, 2008, Act 129 of 2008 became effective and required electric distribution companies ("EDCs"), such as PPL Electric, to file smart meter technology procurement and installation plans with the Commission within nine months. On June 24, 2009, the Commission issued its *Smart Meter Implementation Order*, which set forth requirements for the smart meter plans and procedures for the submission, review, and approval of the smart meter plans. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) ("*Smart Meter Implementation Order*").

On August 14, 2009, PPL Electric filed its initial Smart Meter Plan in compliance with Act 129 and the Commission's *Smart Meter Implementation Order*. As explained in that proceeding, the Company previously deployed AMI meters and metering system between 2002 and 2004, which were a part of a power line carrier ("PLC") metering system. *See Petition of PPL Electric Utilities Corporation for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123945, p. 5 (Order entered June 24, 2010) ("*2010 Smart Meter Order*"). The Company contended that its existing PLC system met the requirements under Act 129 and the *Smart Meter Implementation Order*. However, the Commission ultimately held that PPL Electric's existing PLC meters did not fully meet these requirements. *See 2010 Smart Meter Order*, p. 24. Accordingly, the Commission directed PPL

Electric to develop a new Smart Meter Plan that would deploy a new AMI technology that fully meets these requirements. *See id.*

On June 30, 2014, PPL Electric filed its new Smart Meter Plan intended to comply with all the requirements of Act 129 and the Commission's *Smart Meter Implementation Order*. (See PPL Electric Exhibit No. 3) To meet those requirements, the Company proposed RF Mesh meters and metering system. PPL Electric selected this technology because the Company determined that the RF Mesh system would support the 15 capabilities required by Act 129 and the *Smart Meter Implementation Order*. (See PPL Electric Exhibit No. 3, pp. 5-6, 20-22) The RF Mesh system allows the Company to receive data from the customer's meter wirelessly, unlike PPL Electric's previous powerline carrier ("PLC") system that used the customer's actual wires. (Tr. 52-53) The individual RF Mesh meters are used as relay points to transmit data back to PPL Electric. (Tr. 53) Under the Smart Meter Plan, the RF Mesh meters would be deployed between 2017 and 2019 for all of PPL Electric's 1.4 million customers. (PPL Electric Exhibit No. 3, pp. 3, 32; Tr. 52)

On September 3, 2015, the Commission entered its Opinion and Order approving the new Smart Meter Plan, as modified, finding that unlike the Company's existing PLC meters, the new RF Mesh meters meet the requirements of Act 129 and the Commission's *Smart Meter Implementation Order*. *See Petition of PPL Electric Utilities Corp. for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781 (Order Entered Sept. 3, 2015) ("*2015 Smart Meter Order*").

The instant proceeding concerns PPL Electric's installation of the new RF Mesh meter pursuant to Act 129, *Smart Meter Implementation Order*, and Commission-approved Smart Meter Plan. On May 16, 2017, PPL Electric sent J. Jude Bervinchak a letter notifying him that it

intended to install the new RF Mesh meter on his property located at 825 Christine Lane.² (PPL Electric Exhibit No. 2B) Specifically, the RF Mesh meter to be installed for J. Jude Bervinchak's residential account is the Landis+Gyr Focus AXR-SD meter. (Tr. 51) The Complainants contest PPL Electric's planned installation of the new AMI meter.

B. THE COMPLAINANTS HAVE FAILED TO SUSTAIN THEIR BURDEN OF PROOF

The Complainants have failed to sustain their burden of proof that PPL Electric would violate the Public Utility Code or any Commission regulation or order by installing the new AMI meter. PPL Electric is legally required to install the new AMI meter by Act 129 and several Commission orders, and the Complainants have failed to prove that installing the meter would constitute unsafe and unreasonable service in violation of 66 Pa. C.S. § 1501. Therefore, the Complaints should be denied in their entirety and with prejudice.

1. PPL Electric's Installation of the New AMI Meter Is Required by Law

PPL Electric is legally required to install the RF Mesh meter on the property by Act 129 and Commission orders. Section 2807(f) of the Public Utility Code prescribes that EDCs, like PPL Electric, must file smart meter plans and "shall furnish smart meter technology" in any of the following situations: (1) "[u]pon request from a customer that agrees to pay the cost of the smart meter at the time of the request"; (2) "[i]n new building construction"; and (3) "[i]n accordance with a depreciation schedule not to exceed 15 years." 66 Pa. C.S. § 2807(f)(1)-(2) (emphasis added). In interpreting the smart meter provisions of Act 129, the Commission

² The Company also sent Donna Bervinchak a letter on May 16, 2017, notifying her that it intended to install the new RF Mesh meter on her property. (PPL Electric Exhibit No. 2A) However, as mentioned previously, Donna Bervinchak moved into J. Jude Bervinchak's residence located at 825 Christine Lane. (Tr. 7; see PPL Electric Motion to Consolidate ¶¶ 10-11) As a result, Donna Bervinchak no longer has an electric service account with PPL Electric. (Tr. 38; PPL Electric Exhibit No. 2A) Therefore, Donna Bervinchak can no longer contest the installation of the new AMI meter at her old residence.

declared that EDCs must “deploy smart meters system-wide” because of the requirement that smart meters be deployed “in accordance with a depreciation schedule not to exceed 15 years.” *Smart Meter Implementation Order*, p. 14. The Commission also “recognize[d] that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment.” *Id.*, pp. 9, 14. Therefore, PPL Electric must install the new smart meters for every customer in its service territory.

In addition, nothing in Act 129 permits a customer to “opt-out” of a smart meter installation. Indeed, the Commission previously has found in several cases that Act 129 contains no such opt-out language. *See, e.g., Starr v. PECO Energy Co.*, Docket No. C-2015-2516061, p. 11 (Order Entered Sept. 1, 2016) (footnote omitted). Specifically, in *Starr*, the Commission observed that it has “rejected similar claims that the installation of smart meters is not mandatory or that an opt-out is permissible under Act 129.” *Id.* Although bills have been proposed in the General Assembly to add such an opt-out (see, e.g., House Bill 1564 of 2017-2018 Session), they have not been enacted. Thus, a customer cannot opt-out of the AMI meter installation under Act 129.

Moreover, PPL Electric must comply with the relevant Commission orders directing the Company to deploy the new AMI meters. As mentioned previously, the Commission determined that the Company’s existing PLC meters are not compliant with Act 129 and the Commission’s *Smart Meter Implementation Order*. *See 2010 Smart Meter Order*, p. 24; (Tr. 52). Under the Company’s Commission-approved Smart Meter Plan, PPL Electric must replace all of the PLC meters with the RF Mesh meters, which the Commission declared as meeting all of the requirements of Act 129 and the Commission’s *Smart Meter Implementation Order*. *See 2015 Smart Meter Order*, p. 24. PPL Electric is not permitted to install any other type of meter under

its Smart Meter Plan and cannot leave the existing, non-compliant PLC meter in place. (Tr. 52) Therefore, if the Company does not install the new RF Mesh meter on the property where the Complainants reside in accordance with the Commission-approved deployment schedule,³ PPL Electric may violate the Commission's *2010 Smart Meter Order*, *2015 Smart Meter Order*, and *Smart Meter Implementation Order*.

For these reasons, PPL Electric must install the new RF Mesh meter on the property where the Complainants reside or else the Company may violate Section 2807(f) of the Public Utility Code and the Commission's *2010 Smart Meter Order*, *2015 Smart Meter Order*, and *Smart Meter Implementation Order*.

2. Installing the New AMI Meter Would Not Constitute Unsafe or Unreasonable Service

The Complainants have failed to meet their burden of proof that installing the new AMI meter would constitute unsafe or unreasonable service. In this proceeding, the Complainants generally have alleged that the new AMI meter will cause them "harm, injury, and financial loss." (Tr. 14, 26) In support of their claims, the Complainants personally testified and presented some written exhibits. (See Tr. 11-30) The Complainants never called any witnesses to testify on their behalf.

As explained in more detail below, the Complainants' claims are unsubstantiated, unreliable, and largely predicated on exhibits that are hearsay and wholly lack merit. In contrast,

³ Although Act 129 uses the language "not to exceed 15 years," the Commission encouraged EDCs "to expedite the deployment process if it will provide increased customer benefits in a cost effective manner." *Smart Meter Implementation Order*, p. 14. The Commission also recognized that system-wide deployment of smart meters would involve "more than just the meter hardware attached to the customer's premises." *Id.*, p. 6. EDCs would need time to select the technology, train personnel, and deploy the entire AMI network, including any associated hardware and software. *Id.* For PPL Electric, the Company's Commission-approved Smart Meter Plan states that the smart meters are to be deployed system-wide from 2017 through 2019 with additional actions beyond 2019 to get the full network up and running. (PPL Electric Exhibit No. 3, pp. 3, 32; Tr. 233) Notably, in approving the Company's Smart Meter Plan, the Commission found that the deployment of PPL Electric's new RF Mesh meters "should be done sooner rather than later." *2015 Smart Meter Order*, p. 36.

PPL Electric presented substantial, credible, and reliable evidence that wholly rebutted the Complainants' contentions. Therefore, the Complainants have failed to meet their burden of proof that installing PPL Electric's new AMI meter would be unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.

a. The Complainants Have Failed to Demonstrate that the New AMI Meter Causes, Contributes to, or Exacerbates Any Adverse Health Effect

The Complainants contend that PPL Electric should not install the new AMI meter because they have concerns with the new meter will affect their health, including Donna Bervinchak's claimed symptoms of electro-hypersensitivity ("EHS"). (Complainants' Exhibit C-1, p. 15) J. Jude Bervinchak does not allege any specific adverse health effects due to AMI meter exposure; he simply claims that smart meters cause him harm, injury, and financial loss. (Tr. 14)

In support of their allegations, the Complainants have submitted documents from anti-smart meter and anti-EMF websites, articles, and other documents attempting to prove a link between adverse health effects and RF fields. (*See* Complainants' Exhibits C-1 and C-2) The Complainants also have presented letters from other people either stating that Donna Bervinchak suffers from her alleged symptoms when exposed to AMI meters or claiming that they personally experience adverse health effects from AMI meters. (*See* Complainants' Exhibit C-1, pp. 9-14; Complainants' Exhibit C-2, pp. 4-6, 12-13, 18-19, 24-25)

As explained in more detail below, the Complainants' testimony and exhibits wholly fail to sustain their burden of proof that the new AMI meter causes, contributes to, or exacerbates an illness for several reasons.

i. There Is No Reliable Scientific Basis to Support the Complainants' Allegations that the Very Low Non-Thermal RF from the AMI Meters Cause Biological Effects

There also is no reliable scientific basis to conclude that very low, non-thermal (non-heating) levels of RF fields from the Company's AMI meters can or will cause any biological effects.

Dr. Christopher Davis is a highly experienced scientific researcher and teacher in Physics, Electrical Engineering, Electromagnetics, and Radio Frequency (RF) Electromagnetics.⁴ (PPL Electric Statement No. 1A, p. 1, line 9 to p. 5, line 5; PPL Electric Statement No. 1B, p. 1, line 9 to p. 5, line 5) Dr. Davis has a Ph.D. in Physics and is a full Professor with an endowed Chair at the University of Maryland, where for over 30 years he has taught Physics, Electrical Engineering, Electromagnetics, and RF Electromagnetics to undergraduate and graduate students. (PPL Electric Statement No. 1A, p. 1, line 9 to p. 2, line 8; PPL Electric Statement No. 1B, p. 1, line 9 to p. 2, line 8) In addition to his teaching, Dr. Davis is an active scientific researcher in the fields of Physics, Biophysics, Electrical Engineering, Bioelectromagnetics and RF Bioelectromagnetics. He has conducted many scientific studies in these fields and has published over 250 studies in peer-reviewed scientific journals. In particular, he has conducted a substantial amount of research on RF fields of the type produced by the AMI meters being used by the Company. (PPL Electric Statement No. 1A, p. 2, lines 10-19; PPL Electric Statement No. 1B, p. 2, lines 10-19)

⁴ Dr. Davis is the Minta Martin Endowed Professor of Engineering and Professor of Electrical and Computer Engineering at the University of Maryland in College Park, Maryland. (PPL Electric Statement No. 1A, p. 1, lines 9-10; PPL Electric Statement No. 1B, p. 1, lines 9-10) He earned a BA with Honors in Natural Sciences from Trinity College at Cambridge University and a Ph.D. in Physics at the University of Manchester. (PPL Electric Statement No. 1A, p. 1, lines 12-18; PPL Electric Statement No. 1B, p. 1, lines 12-18) In this proceeding, Dr. Davis was certified as an expert in physics, biophysics, chemistry, electrical engineering, electromagnetics, bioelectromagnetics, radiofrequency bioelectromagnetics, and dosimetry. (Tr. 61-62)

Dr. Davis has served on expert committees that have evaluated the scientific research on RF fields, including the Institute of Electrical and Electronic Engineers (“IEEE”) Committee on Man and Radiation (“COMAR”) and as chair of the Subcommittee on Radio Frequency Fields, which consists of experts who examine the scientific research on RF fields and evaluate the IEEE exposure guidelines. He has also provided expert advice on electromagnetic fields, including RF fields dosimetry and proposed mechanisms for biological effects other than heating, to the United Kingdom Health Protection Agency, the U.S. National Institutes of Health and the U.S. Food and Drug Administration's Center for Devices and Radiological Health. Dr. Davis is a Fellow of the IEEE and a Fellow of the Institute of Physics. (PPL Electric Statement No. 1A, p. 3, lines 9-12; p. 4, lines 5-22; PPL Electric Statement No. 1B, p. 3, lines 9-12; p. 4, lines 5-22)

Dr. Davis explained that RF fields are part of the lower energy, non-ionizing portion of the electromagnetic spectrum, which consists of lower frequency signals that do not have enough energy to break chemical bonds in cells or DNA. (PPL Electric Statement No. 1A, p. 5, line 15 to p. 6, line 6; PPL Electric Statement No. 1B, p. 5, line 15 to p. 6, line 6) RF fields come from many sources in our everyday environments, including AM/FM radio, television broadcast, cell phones and their communication networks, portable phones, garage door openers and wifi networks. (PPL Electric Statement No. 1A, p. 5, line 22 to p. 6, line 6; p. 10, lines 11-14; PPL Electric Statement No. 1B, p. 5, line 22 to p. 6, line 6; p. 10, lines 13-16)

There is nothing unusual about the RF fields from the AMI meters being deployed by the Company. (PPL Electric Statement No. 1A, p. 10, lines 10-11; PPL Electric Statement No. 1B, p. 10, lines 12-13) Dr. Davis testified that the FCC has determined safe public exposure levels for RF fields from devices that transmit RF signals, such as the AMI meters. (PPL Electric

Statement No. 1A, p. 8, lines 8-10; PPL Electric Statement No. 1B, p. 8, lines 13-15) The FCC safe public exposure limits are based on evaluations of the body of scientific research on RF fields and were adopted in consultation with other federal agencies, , including the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA). (PPL Electric Statement No. 1A, p. 8, lines 10-21; PPL Electric Statement No. 1B, p. 8, line 15 to p. 9, line 3)

Based on the engineering specifications for the Landis & Gyr AMI meter being deployed by the Company, Dr. Davis calculated that the levels of RF fields from the AMI meters are **98,000 times lower** than the RF exposure safety limits established by the FCC. (PPL Electric Statement No. 1A, p. 11, line 21 to p. 12, line 1 ; PPL Electric Statement No. 1B, p. 12, lines 1-4 (emphasis added); see PPL Electric Exhibit CD2) As a result, Dr. Davis found that “the RF field levels from the AMI meters being used by PPL Electric more than comply with the applicable FCC RF exposure limit.” (PPL Electric Statement No. 1A, p. 9, lines 10-11; PPL Electric Statement No. 1B, p. 9, lines 14-15). Moreover, the RF signals from the AMI meter are of very short duration and will occur for only a total of 84 seconds over a 24-hour period. (PPL Electric Statement No. 1A, p. 7, lines 21-23; PPL Electric Statement No. 1B, p. 7, lines 21-23)

In addition, there are many sources of RF signals in the everyday environment, and the background levels of RF fields at Complainants’ residence are many times higher than the fields from the AMI meter. Dr. Davis testified that there are eight television broadcast towers with a 50 mile radius of Complainant’s location. (PPL Electric Statement No. 1A, p. 11, lines 6-7; PPL Electric Statement No. 1B, p. 11, lines 8-10) Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainants’ residence are **35 times higher** than the RF signals from the AMI meter. (PPL Electric Statement No. 1A, p. 11, lines 6-13 (emphasis added); PPL Electric Statement No. 1B, p. 11, lines 8-15 (emphasis added);

see PPL Electric Exhibit CD-5) Therefore, the un rebutted expert testimony about RF field levels in this case is that the background level of RF fields at Complainants' residence is far higher than the very low and short duration RF signals from the AMI meter.

In this proceeding, Dr. Davis was recognized as an expert in Physics, Biophysics, Chemistry, Electrical Engineering, Electromagnetics, Bioelectromagnetics, and Radio Frequency Bioelectromagnetics and Dosimetry. Based on his education, training and experience in those fields of expertise, Dr. Davis concluded to a reasonable degree of scientific certainty that:

1) The levels of RF fields from the AMI meters being used by PPL Electric are extremely low (98,000 times lower than the RF exposure safety limits established by the FCC). (PPL Electric Statement No. 1A, p. 11, lines 21-23; PPL Electric Statement No. 1B, p. 12, lines 1-3)

2) These extremely low level RF fields are many times lower than the RF fields people are commonly encounter from everyday sources, including the background levels of RF fields at Complainant's residence. (PPL Electric Statement No. 1A, p. 11, line 21 to p. 12, line 2; PPL Electric Statement No. 1B, p. 12, lines 3-5)

3) There is no reliable scientific basis in physics, biophysics, bioelectromagnetics or RF bioelectromagnetics to conclude that the very low levels of RF fields from the AMI meters being deployed by the Company can or will cause any adverse thermal or non-thermal biological effects in people. (PPL Electric Statement No. 1A, p. 12, lines 3-6; PPL Electric Statement No. 1B, p. 12, lines 6-9)

ii. There Is No Reliable Medical Basis to Support the Complainants' Allegations that the AMI Meters Cause Adverse Health Effects

There is no reliable medical basis to conclude that the new smart meter causes, contributes to, or exacerbates any illness, disease, or symptoms alleged by the Complainants.

Dr. Mark Israel is an eminent physician and medical researcher.⁵ (PPL Electric Statement No. 2A, p. 1, line 5 to p. 3, line 2; PPL Electric Statement No. 2B, p. 1, line 5 to p. 3, line 2) He is Professor of Medicine, Pediatrics, and Molecular and Systems Biology at the Dartmouth Medical School and the Executive Director of the Israel Cancer Research Fund in New York, an international charitable fund for medical and scientific research programs. (PPL Electric Statement No. 2A, p. 1, lines 11-14; PPL Electric Statement No. 2B, p. 1, lines 11-14) Previously, Dr. Israel was the Director of the Cancer Center at Dartmouth Medical School and the Dartmouth Hitchcock Medical Center. As Director of the Cancer Center, Dr. Israel oversaw a major medical health care facility providing care to more than 5,000 new patients each year and he managed research programs with an annual budget of more than \$250 million. (PPL Electric Statement No. 2A, p. 2, line 17 to p. 3, line 2; PPL Electric Statement No. 2B, p. 2, line 17 to p. 3, line 2)

Prior to becoming Director of the Cancer Center, Dr. Israel treated patients, taught medical students and directed a medical research laboratory at the University of California at San Francisco (UCSF), where he also directed the Preuss Laboratory of Molecular Neuro-oncology. Before joining UCSF, Dr. Israel spent 14 years conducting research and treating patients at the US National Institutes of Health (“NIH”), where he was the Head of the Molecular Genetics

⁵ Dr. Israel received his undergraduate degree from Hamilton College and his medical degree from the Albert Einstein College of Medicine. He completed his medical training at Harvard Medical School (PPL Electric Statement No. 2A, p. 1, lines 16-20; PPL Electric Statement No. 2B, p. 1, lines 16-20) Dr. Israel was certified as an expert in medicine and medical research, in particular as related to RF fields and health. (Tr. 67)

Section of the Pediatrics Branch at the National Cancer Institute and also worked in the National Institute of Allergy and Infectious Diseases. His research at the NIH identified specific genes responsible for the cause of certain childhood cancers and contributed to improvements in the diagnosis and treatment of childhood cancer, as well as early developments in the field of cancer gene therapy. (PPL Electric Statement No. 2A, p. 1, line 20 to p. 2, line 16; PPL Electric Statement No. 2B, p. 1, line 20 to p. 2, line 16)

Dr. Israel is board certified and licensed to practice medicine. (PPL Electric Statement No. 2A, p. 3, lines 3-6; PPL Electric Statement No. 2B, p. 3, lines 3-6) He has conducted medical research for 40 years in a wide variety of areas, including systems biology, biochemistry, cell biology, cancer, molecular biology, and molecular genetics. He has published over 245 medical research studies in leading peer-reviewed scientific journals. (PPL Electric Statement No. 2A, p. 3, line 9 to p. 4, line 2; PPL Electric Statement No. 2B, p. 3, line 9 to p. 4, line 2) Dr. Israel also has taught medicine and science for more than 30 years to medical students, graduate students, interns, residents, and practicing physicians subjects in a number of fields, including endocrinology, immunology, hematology, neurology, cardiology, biochemistry, cell biology, genetics, molecular genetics, medical oncology, and radiation oncology. (PPL Electric Statement No. 2A, p. 3, lines 14-17; PPL Electric Statement No. 2B, p. 3, lines 14-17)

Dr. Israel is an elected Fellow of the American Association for the Advancement of Science, an elected member of the Association of American Physicians, and an elected member of the American Society for Clinical Investigation, each of which is based on peer recognition of the scientific merit of his work and commitment to advancing medical science. He has been asked to provide scientific advice and direction to a number of organizations by serving on their advisory boards, such as the Science Advisory Board for the Yale Cancer Center, which he

chaired for almost a decade, and the External Advisory Boards for the Children’s Cancer Research Institute at the University of Texas Health Science Center, the University of Nebraska Eppley Cancer Center, the Carbone Cancer Center at the University of Wisconsin, and the National Brain Tumor Society, among others. He also served on the Board of Scientific Counselors for the NCI. During his work at the NCI, he was awarded two U.S. Public Health Service commendation medals. In 1998, he received the Farber Award, which is awarded annually by the American Association of Neurological Surgeons for excellence in cancer research. In 2014, he received the C. Everett Koop Courage Award for the pursuit of evidence-based medicine. (PPL Electric Statement No. 2A, p. 5, lines 3-18; PPL Electric Statement No. 2B, p. 5, lines 3-18)

Dr. Israel testified that claimed symptoms related to EHS are most accurately described “Idiopathic Environmental Intolerance” (“IEI”), in which “idiopathic” means “cause unknown,” rather than electromagnetic hypersensitivity. (PPL Electric Statement No. 2A, p. 12, line 13 to p. 13, line 7) (emphasis added) Dr. Israel evaluated the scientific research on IEI and found that “[r]eliable studies dating back to at least 2002 and also recent reviews of the studies by experts and reviews by expert panels of public health authorities have found IEI and the variety of symptoms attributed to it are not caused by exposure to RF fields.” (PPL Electric Statement No. 2A, p. 13, lines 10-12; PPL Electric Statement No. 2B, p. 12, lines 17-19) For example, a systematic review of 46 studies involving 1,175 individuals who claimed IEI symptoms found that people claiming IEI symptoms from RF fields could not replicate the claimed effect under controlled laboratory conditions. (PPL Electric Statement No. 2A, p. 13, line 21 to p. 14, line 5; PPL Electric Statement No. 2B, p. 13, lines 5-12) Another recent study found that people who claimed IEI symptoms from RF fields reported lower levels of well-being when they knew they

were exposed to RF fields, but when they did not know if they were being exposed, their reports of symptoms were not associated with RF fields. That study concluded that “it is IEI-EMF individuals’ belief that exposure to RF EMFs will cause harm, rather than actual exposure itself, that results in the presence of symptoms in IEI-EMF individuals.” (PPL Electric Statement No. 2B, p. 13, lines 12-20)

In addition, Dr. Israel testified that the research on IEI has been evaluated by credible public health entities and expert groups, including the United Kingdom Health Protection Agency (2012), the Royal Society of Canada (2013), the New Zealand Ministry of Health (2015), and the European Commission’s Scientific Committee on Emerging and Newly Identified Health Risks (2015). Based on their reviews of the scientific research, these entities concluded there is no reliable scientific evidence that exposure to RF fields causes claimed IEI symptoms. (PPL Electric Statement No. 2A, p. 14, line 9 to p. 15, line 3; PPL Electric Statement No. 2B, p. 14, lines 4-21) The World Health Organization has found that “There is little scientific evidence to support the idea of electromagnetic hypersensitivity.” These findings from public health entities and expert panels show that the theory of IEI caused by exposure to RF fields has not been generally accepted in the medical community. (PPL Electric Statement No. 2A, p. 14, line 22 to p. 15, line 3; PPL Electric Statement No. 2B, p. 14, lines 17-21)

Furthermore, there are no medical records to support the Complainants’ IEI claims. Although the Company requested such medical records in discovery, the Complainants never provided any medical documents. (PPL Electric Statement No. 2A, p. 8, lines 5-7; PPL Electric Statement No. 2B, p. 7, lines 20-22; *see* PPL Electric Motions to Compel) Nor did the Complainants present any medical records as a part of their direct case. As a result, nothing in the record demonstrates that either of the Complainants has been diagnosed with a recognized

illness or disease that was caused, contributed to, or exacerbated by the new AMI meter or that would be caused, contributed to, or exacerbated by the new AMI meter.

Dr. Israel also evaluated scientific research on RF fields and adverse health effects generally. He examined controlled animal laboratory studies, which “provide a reliable basis for determining whether RF fields have the capability to cause or contribute to adverse health effects in animals,” such as cancer or adverse effects on growth, development, or reproduction. (PPL Electric Statement No. 2A, p. 9, line 2 to p. 10, line 20; PPL Electric Statement No. 2B, p. 8, line 16 to p. 10, line 11) These well-designed and well-conducted studies found no such adverse health effects. (PPL Electric Statement No. 2A, p. 9, line 2 to p. 10, line 20; PPL Electric Statement No. 2B, p. 8, line 16 to p. 10, line 11) Dr. Israel further reported that the World Health Organization and a number of other public health authorities have concluded that the scientific research on RF exposures from cell phone use, which are far higher than the RF from PPL Electric’s smart meters, has not shown that RF fields cause adverse health effects. (PPL Electric Statement No. 2A, p. 11, lines 8-22; PPL Electric Statement No. 2B, p. 10, line 22 to p. 11, line 13) Several U.S. state public health authorities also have investigated claims about health effects from smart meters and have concluded that there is no credible scientific evidence that RF fields from smart meters will cause or contribute to any adverse health effects. (PPL Electric Statement No. 2A, p. 12, lines 1-7; PPL Electric Statement No. 2B, p. 11, lines 14-20)

Dr. Israel reviewed the exhibits offered by Donna Bervinchak.⁶ Dr. Israel found that none of these exhibits are actual scientific studies and most appeared to be taken from activist

⁶ Dr. Israel did not have an opportunity to review the articles offered by Jude Bervinchak as exhibits. (PPL Electric Statement No. 2, p. 7, lines 14-17) Prior to the evidentiary hearing, PPL Electric could not locate these exhibits and asked Jude Bervinchak multiple times to re-send them. (Tr. 16-17) Jude Bervinchak never complied with the Company’s request. (Tr. 17) Since the evidentiary hearing, PPL Electric has been able to obtain copies of these articles, but it is unclear at the time filing this Main Brief whether they were admitted into the record.

websites. (PPL Electric Statement No. 2A, p. 15, lines 4-23) He testified that these exhibits lack scientific objectivity, do not offer a balanced assessment of the scientific research on RF fields, and do not provide scientifically reliable or useful data for reaching conclusions about RF fields and the causation of any symptom or health effect. (PPL Electric Statement No. 2A, p. 16, lines 4-7) As a medical doctor and scientific researcher, Dr. Israel would not rely on any of the documents provided by Complainant. (PPL Electric Statement No. 2A, p. 16, lines 1-4)

Overall, as an expert in medicine and medical research, particularly as related to RF fields and health, Dr. Israel found, based on his medical education, training and experience, and his evaluation of the scientific research and to a reasonable degree of medical certainty, that:

1) There is no reliable medical basis to conclude that RF fields from the AMI meters being used by PPL Electric will cause or contribute to the development of illness or disease (PPL Electric Statement No. 2A, p. 16, lines 19-22; PPL Electric Statement No. 2B, p. 15, lines 12-15)

2) There is no reliable medical basis to conclude that RF fields from the AMI meter being used by PPL Electric would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainants, or any other adverse health effects. (PPL Electric Statement No. 2A, p. 17, lines 4-6; PPL Electric Statement No. 2B, p. 15, lines 19-21)

iii. The Complainants' Exhibits Cannot Support Any Findings of Fact

In support their allegations that installing the new AMI meter cause, contribute to, or exacerbate any illnesses, the Complainants have presented letters written by others in which they claim that Donna Bervinchak or others experience adverse health effects when exposed to AMI meters and a number of documents making claims about AMI meters and health. (See Complainants' Exhibit C-1, pp. 9-14; Complainants' Exhibit C-2, pp. 4-6, 12-13, 18-19, 24-25)

None of these documents can support any findings of fact because they are hearsay and lack scientific and evidentiary merit.

First, the documents should not be relied upon by the ALJ because they are hearsay and are not subject to a hearsay exception. Specifically, the Complainants have presented exhibits that were not written by them and were being offered to prove the truth of the matter asserted. (See Complainants' Exhibit C-1, pp. 9-14; Complainants' Exhibit C-2, pp. 4-6, 12-13, 18-19, 24-25) None of the authors of these statements were presented as witnesses to authenticate the veracity of their contents. Therefore, the documents are hearsay.

Under Pennsylvania's "Walker Rule," it is well-established that "[h]earsay evidence, properly objected to, is not competent evidence to support a finding." *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) (citations omitted). Even if hearsay evidence is "admitted without objection," the ALJ must give the evidence "its natural probative effect and may only support a finding . . . if it is corroborated by any competent evidence in the record;" as "a finding of fact based solely on hearsay will not stand." *Id.* at 370 (citations omitted).⁷

Here, PPL Electric objected to these documents because they are hearsay and not subject to a hearsay exception. (See Tr. 20-21, 28). Although these exhibits were admitted into the record,⁸ the exhibits should not be used to support any findings of fact. (Tr. 23, 28) Indeed, PPL Electric has a statutory right to cross-examine persons "as may be required for a full and true disclosure of the facts." 66 Pa. C.S. § 332(c). Because the authors of these hearsay statements did not testify, the Company was denied this right and unable to test the veracity of their

⁷ 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).

⁸ PPL Electric continues to maintain that these exhibits should not be admitted into the record because they are hearsay and not subject to a hearsay exception.

statements. It is for this reason such hearsay is generally inadmissible and should not be relied upon in this proceeding.⁹

Moreover, even assuming *arguendo* that the evidence was not properly objected to, the Complainants have presented no “competent evidence” to corroborate those statements. *Walker* at 370. As explained in more detail below, the exhibits contain many flaws and mischaracterizations and cannot be used to form a reliable opinion. Indeed, the only evidence of record that these other persons experienced the alleged symptoms is the hearsay statements. Therefore, as the Commission has previously held, “[w]hether the ALJ erred by initially admitting the hearsay evidence is an issue we need not address” because “[e]ven if such evidence can be admitted, it is clear that . . . such evidence may not be given any weight in an administrative proceeding.” *Anserphone, Inc. & Elite Answering Serv. v. The Belle Tele. Co. of Pa.*, 1993 Pa. PUC LEXIS 70, at *29-30 (Order entered April 1, 1993). Thus, the Complainants’ hearsay documents cannot support a finding of fact that the new AMI meters cause, contribute to, or exacerbate any illnesses.

Second, the exhibits completely lack scientific and evidentiary merit and should be afforded no weight. Specifically, the exhibits contain the following flaws and mischaracterizations:

⁹ The Company notes that expert witnesses can rely on hearsay in forming their 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. However, the Complainants are not expert witnesses. Moreover, 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 Klein v. Aronchick*, 85 A.3d 487, 503-04 (Pa. Super. 2014) (citing *Aldridge v. Edmunds*, 750 A.2d 292, 297-98 (Pa. 2000)); *Nigro v. Remington Arms Co.*, 637 A.2d 983, 993 (Pa. Super. 1993) (citations omitted).

1. Eleanor Gomez's Letter

- The letter contains Ms. Gomez's characterizations of Donna Bervinchak's health and well-being and attributes the cause of her symptoms in February 2012 to be a smart meter installed on Donna Bervinchak's residence in California. Nothing in the record details whether Ms. Gomez is a medical professional or otherwise qualified to provide such an opinion. Moreover, there is nothing in the record about the type of smart meter installed on Donna Bervinchak's residence in California and if it is the same meter that is being installed by PPL Electric.

2. Katherine Sandoval's Letter dated October 24, 2013

- The letter contains Ms. Sandoval's characterizations of Donna Bervinchak's health and well-being and attributes the cause of her symptoms to be a smart meter installed on Donna Bervinchak's residence in California. Nothing in the record details whether Ms. Sandoval is a medical professional or otherwise qualified to provide such an opinion. Moreover, there is nothing in the record about the type of smart meter installed on Donna Bervinchak's residence in California and if it is the same meter that is being installed by PPL Electric.

3. Margie Lucas's Letter

- In the letter, Ms. Lucas alleges that she personally experiences adverse health effects from smart meters. She claims to experience memory loss, irritability, confusion, anxiety, fatigue, and headaches. Nothing in the record corroborates the letter, and it is irrelevant to whether either of the Complainants personally has a diagnosed illness or disease or experiences any symptoms due to RF field exposure.

4. Geraldine A. Cybulski's Letter dated December 27, 2017

- Ms. Cybulski alleges in the letter that she had a "Merlin Monitor," which connected her pacemaker to the hospital and that her smart meter sent "waves" through her body, so she returned the Merlin Monitor, turned off the breaker to her bedroom, and purchased a "Smart Meter Guard." Nothing in the record corroborates the letter, and it is irrelevant to whether either of the Complainants has a diagnosed illness or disease or experiences any symptoms due to RF field exposure. Indeed, neither of the Complainants claims to have a pacemaker, as Ms. Cybulski alleges. Moreover, Ms. Cybulski's letter is unclear as to whether she feels to have experienced an adverse health effect from the smart meter and even concedes that "there has been no investigation" on the issue.

5. Daniel S. Frankston's Letter

- The letter contains Mr. Frankston's characterizations of Donna Bervinchak's health and well-being and attributes the cause of her symptoms to be a smart meter installed on Donna Bervinchak's residence in California as well as any devices that emit electromagnetic fields. Nothing in the record details whether Mr. Frankston is a medical professional or otherwise qualified to provide such an opinion. Moreover, there is

nothing in the record about the type of smart meter installed on Donna Bervinchak's residence in California and if it is the same meter that is being installed by PPL Electric.

6. Eileen and Neil Crone's Letter

- In the letter, Mr. and Ms. Crone allege that they personally experience adverse health effects from smart meters. They claim to have headaches and difficulty sleeping. Moreover, they claim that a next door neighbor has insomnia and attribute the cause as a smart meter. Nothing in the record corroborates the letter, and it is irrelevant to whether either of the Complainants personally has a diagnosed illness or disease or experiences any symptoms due to RF field exposure.

As noted above, Dr. Israel, who was the only medical doctor and medical researcher to testify in this case, reviewed all of Donna Bervinchak's exhibits¹⁰ and testified that they lack scientific objectivity, do not offer a balanced assessment of the scientific research on RF fields, and do not provide scientifically reliable or useful data for reaching conclusions about RF fields and the causation of any symptom or health effect. As a medical doctor and medical researcher, Dr. Israel would not rely on any of the documents provided by Complainant. (PPL Electric Statement No. 2A, p. 15, line 4 to p. 16, line 7)

For these reasons, the Complainants' exhibits lack merit should be afforded no weight. Therefore, these exhibits cannot support any findings of fact in this proceeding.

¹⁰ At the time of filing this Main Brief, it is unclear whether the articles offered by Donna and Jude Bervinchak were in fact admitted into the record as exhibits, as they were not contained in the copies of Complainants' Exhibits C-1 and C-2 provided by the court reporter. Notwithstanding, even if they were, Dr. Israel testified that Donna Bervinchak's exhibits lack merit. (PPL Electric Statement No. 2A, p. 15, line 4 to p. 16, line 7) Moreover, although Dr. Israel was unable to review the articles submitted by Jude Bervinchak (see note 6, *supra*), these documents should not be relied upon because they are hearsay statements that offer opinions on scientific, medical, and legal issues and are not corroborated by any competent evidence. The documents have several other flaws. The document titled "Electromagnetic Hypersensitivity" is an incomplete and selective portion of the full document, with key scientific conclusions that contradict the Complainants' health claims omitted. Additionally, it is not a published, peer-reviewed scientific study; it merely is a report of proceedings of various workshop tutorials. The document titled "Scientific Consensus" also is not a published, peer-reviewed scientific study, as it is an online article by a paralegal "who has been active in the legal challenge by the Maine group 'Smart Meter Safety Coalition.'" Therefore, it is an advocacy document for an anti-AMI meter group and not reliable. Finally, the document titled "Smart Meters: A Cautionary Tale" is an incomplete and selective portion of the document. Furthermore, it is an advocacy document written by a person who tried to collaterally attack the Michigan Public Service Commission's health and safety determinations about AMI meters, despite the Michigan Court of Appeals declaring that such issues may not be revisited. See *In re DTE Elec. Co.*, Case No. U-17767, 2015 Mich. PSC LEXIS 344, at *170-74 (Dec. 11, 2015).

Based on the foregoing, the Complainants have failed to sustain their burden of proof that PPL Electric's new AMI meter would cause, contribute to, or exacerbate any disease, symptom, or illness.

b. The Complainants Have Failed to Prove that the New AMI Meter Is Unsafe and Would Cause Fires

The Complainants also have raised issues about whether the new AMI meter is unsafe and would cause fires. (Tr. 7) For several reasons, any allegations that the new AMI meter is unsafe and would cause fires lack merit.

First, the new AMI meters actually are equipped with software and mechanisms that better alert the Company if there is an issue with overheating. Specifically, there is a heat alarm set up within the meter, so when the temperature of the meter hits an established level, the Company is alerted of the issue. (Tr. 54) Further, PPL Electric takes 15-minute interval temperature readings from the meter, so it can track the meter's temperature and "ensure that there [are] not accelerated temperatures." (Tr. 54)

Second, PPL Electric evaluated the safety of the RF Mesh meters before selecting it as the Company's new AMI technology. (Tr. 55) The Company performed substantial testing to ensure that the new AMI meters could sustain higher temperatures in "high-stress environment[s]" and in situations where there is a faulty connection with the customer's meter base. (Tr. 55)

Third, PPL Electric witness Larson new AMI meter is certified by Underwriters Laboratories ("UL") and meets the requirements of the American National Standards Institute ("ANSI"). (Tr. 54)

For these reasons, the Complainants have failed to prove that the new AMI meter is unsafe and would cause fires.

c. The Complainants Have Failed to Prove that the New AMI Meter Is a Privacy Risk

The Complainants also have raised privacy issues with the new AMI meter. (Tr. 7, 10) The Company's testimony demonstrated that the new AMI meter is not a privacy risk.

PPL Electric witness Hennegan testified that as a part of its Smart Meter Plan proceeding, the Company filed a detailed AMI Customer Privacy Policy, which sets forth the data PPL Electric will collect through the new smart meter, the steps the Company will take to protect the data, and the ways in which PPL Electric will use the data. (Tr. 41-43; PPL Electric Exhibit No. 5) Consistent with that policy, the Company will collect data on the amount of electricity used and significant event information, such as outages, voltage, heat alarms, and meter tampering alerts. (Tr. 41-42; PPL Electric Exhibit No. 5, Section 1.2)

In addition, the Company takes several steps to protect customers' data from public disclosure. (Tr. 42) PPL Electric employs security practices that are all in compliance with the National Institute of Standards and Technology ("NIST"). (Tr. 42) Moreover, the Company encrypts the customers' data and uses firewalls to prevent unauthorized persons from accessing the data. (Tr. 42) PPL Electric also has established "authentication and access control," which are "very strict rules about who can have access to the data." (Tr. 42)

For these reasons, the Complainants have failed to prove that the new AMI meter is a privacy risk.

3. PPL Electric Has a Legal Right to Access the Property for the Purpose of Installing the New AMI Meter

The Complainants both claim that PPL Electric would be trespassing if it were to install the new AMI meter without their consent. (Tr. 10, 23, 33; Complainants' Exhibit C-1, pp. 2, 4-8; Complainants' Exhibit C-2, pp. 10-11, 16-17, 22-23)

The Complainants fail to recognize that PPL Electric has a legal right to access the property for the purpose of installing the new AMI meter. Rule 2F of the Company's Commission-approved tariff states that PPL Electric "shall have access at all reasonable hours to customer's premises, without charge, or the purpose of inspecting, installations, installing meters, reading, testing, removing, replacing, or otherwise maintaining or disposing of any of Company's property." (PPL Electric Exhibit No. 6) (emphasis added) It is well-established that public utilities' tariffs have the force and effect of law and are binding on the utilities and their customers. *See PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386, 402 (Pa. Cmwlth. 2006) (citing 66 Pa. C.S. § 1303 and *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995)). Therefore, the Complainants must grant the Company reasonable access to the property to replace the existing meter.

In fact, the Company would be expressly permitted to terminate service if it is prevented from replacing the meter. *See* 66 Pa. C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); (PPL Electric Exhibit No. 7). Both the Public Utility Code and the Commission's regulations provide that "[f]ailure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading" is grounds for terminating service. *See* 66 Pa. C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3). Moreover, Rule 10(B)(2)(g) of PPL Electric's tariff similarly states that the Company is authorized to terminate service when: (1) its "representatives cannot gain admittance or are refused admittance to the premises for the purpose of reading meters, making repairs, making inspections, or removing Company property"; (2) "the customer interferes with Company representatives in the performance of their duties; or (3) "the meters or other equipment of the Company are not accessible during reasonable hours." (PPL Electric Exhibit No. 7, p. 2)

For these reasons, PPL Electric would not be trespassing when accessing the premises for the purpose of replacing the existing meter with the new AMI meter.

4. Conclusion

Based on the foregoing, the Complainants have failed to sustain their burden of proof that installing the new AMI meter would constitute a violation of the Public Utility Code or any Commission regulation or order. Accordingly, the Complaints should be denied in their entirety and with prejudice.

C. THE COMMISSION HAS EXCLUSIVE JURISDICTION OVER THE COMPLAINANTS' ISSUES WITH THE NEW AMI METER

At the evidentiary hearing, the Complainants disputed that the Commission had the power to adjudicate their claims about the new AMI meter and maintained that they could pursue these claims in civil litigation against PPL Electric. (Tr. 13-14, 26) Contrary to the Complainants' argument, the Commission has exclusive jurisdiction over the Complainants' issues with the new AMI meter.

It is well-established that the General Assembly vested the Commission with the exclusive authority to regulate public utilities' facilities. *See, e.g., Cnty. of Chester v. Phila. Elec. Co.*, 218 A.2d 331, 332-33 (Pa. 1966); *Duquesne Light Co. v. Upper St. Clair Twp.*, 105 A.2d 287, 291-93 (Pa. 1954); *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996, 1005 (Pa. Cmwlth. 2007); *UGI Utils., Inc. v. City of Reading*, 2017 Pa. Commw. LEXIS 1099, at *9-14 (Pa. Cmwlth. 2017). Such jurisdiction extends over the location, construction, and maintenance of the public utility's facilities,¹¹ as well as issues involving the reasonableness, safety, adequacy, and sufficiency of those facilities.¹²

¹¹ *See Cnty. of Chester*, 218 A.2d at 333.

¹² *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted); 66 Pa. C.S. § 1501.

Here, the Complainants are contesting PPL Electric's planned installation of a new AMI on the property where the Complainants reside on the basis that such installation would be unlawful, unsafe, and unreasonable. These issues fall squarely within the Commission's exclusive jurisdiction to regulate public utilities' facilities, including the safety and reasonableness of such facilities. *See, e.g., City of Reading*, 2017 Pa. Commw. LEXIS at *9-14 (holding that the Commission has exclusive jurisdiction to regulate the safety of gas meters). Moreover, the Commission has the exclusive authority to enforce the provisions of the Public Utility Code, including Section 2807(f), which directs EDCs, such as PPL Electric, to install the new AMI meters system-wide. *See* 66 Pa. C.S. §§ 501, 2807(f).

For these reasons, the Commission has exclusive jurisdiction over the issues raised by the Complainants about the new AMI meter.

VII. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge Elizabeth H. Barnes recommend and the Pennsylvania Public Utility Commission deny the Formal Complaints of Donna Bervinchak and J. Jude Bervinchak with prejudice.

Respectfully submitted,



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Date: April 27, 2018

Attorneys for PPL Electric Utilities Corporation

Appendix A – Proposed Findings of Fact

1. On June 30, 2014, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) filed its new Smart Meter Plan intended to comply with all the requirements of Act 129 and the Pennsylvania Public Utility Commission’s (“Commission”) *Smart Meter Implementation Order*. (See PPL Electric Exhibit No. 3)

2. To meet those requirements, the Company selected Radio Frequency (“RF”) Mesh meters and metering system because the Company determined that the RF Mesh system would support the 15 capabilities required by Act 129 and the *Smart Meter Implementation Order*. (See PPL Electric Exhibit No. 3, pp. 5-6, 20-22)

3. The RF Mesh system allows the Company to receive data from the customer’s meter wirelessly, unlike PPL Electric’s previous powerline carrier (“PLC”) system that used the customer’s actual wires. (Tr. 52-53)

4. The individual RF Mesh meters are used as relay points to transmit data back to PPL Electric. (Tr. 53)

5. Under the Smart Meter Plan, the RF Mesh meters are to be deployed between 2017 and 2019 for all of PPL Electric’s 1.4 million customers. (PPL Electric Exhibit No. 3, pp. 3, 32; Tr. 52)

6. The Company currently is in the process of deploying the RF Mesh meters for all of its 1.4 million customers pursuant to its Commission-approved Smart Meter Plan. (Tr. 52; PPL Electric Exhibit No. 3)

7. On May 16, 2017, PPL Electric sent J. Jude Bervinchak and Donna Bervinchak (“Complainants”) letters notifying them that it intended to install the new automated metering

infrastructure (“AMI”) meter, *i.e.*, the RF Mesh meter, on their respective properties. (PPL Electric Exhibit Nos. 2A and 2B)

8. Donna Bervinchak later moved into J. Jude Bervinchak’s residence located at 825 Christine Lane. (Tr. 7; *see* PPL Electric Motion to Consolidate ¶¶ 10-11)

9. Donna Bervinchak no longer has an electric service account with PPL Electric. (Tr. 38; PPL Electric Exhibit No. 2A)

10. The RF Mesh meter to be installed for J. Jude Bervinchak’s residential account is the Landis+Gyr Focus AXR-SD meter. (Tr. 51)

11. The Complainants dispute PPL Electric’s planned installation of the new AMI meter at their premises, 825 Christine Lane, Lancaster, Pennsylvania. (Tr. 13-14, 26; Complainants’ Exhibits C-1 and C-2)

12. The Complainants generally have alleged that the new AMI meter will cause them “harm, injury, and financial loss.” (Tr. 14, 26)

13. In support of their claims, the Complainants personally testified and presented some written exhibits. (*See* Tr. 11-30; Complainants’ Exhibits C-1 and C-2)

14. Dr. Christopher Davis is a highly experienced scientific researcher and teacher in Physics, Electrical Engineering, Electromagnetics, and RF Electromagnetics. (PPL Electric Statement No. 1A, p. 1, line 9 to p. 5, line 5; PPL Electric Statement No. 1B, p. 1, line 9 to p. 5, line 5)

15. Dr. Davis has a Ph.D. in Physics and is a full Professor with an endowed Chair at the University of Maryland, where for over 30 years he has taught Physics, Electrical Engineering, Electromagnetics, and RF Electromagnetics to undergraduate and graduate

students. (PPL Electric Statement No. 1A, p. 1, line 9 to p. 2, line 8; PPL Electric Statement No. 1B, p. 1, line 9 to p. 2, line 8)

16. In addition to his teaching, Dr. Davis is an active scientific researcher in the fields of Physics, Biophysics, Electrical Engineering, Bioelectromagnetics and RF Bioelectromagnetics, conducting many scientific studies in these fields and publishing over 250 studies in peer-reviewed scientific journals. (PPL Electric Statement No. 1A, p. 2, lines 10-19; PPL Electric Statement No. 1B, p. 2, lines 10-19)

17. In particular, Dr. Davis has conducted a substantial amount of research on RF fields of the type produced by the AMI meters being used by the Company. (PPL Electric Statement No. 1A, p. 3, lines 5-6; PPL Electric Statement No. 1B, p. 3, lines 5-6)

18. Dr. Davis explained that RF fields are part of the lower energy, non-ionizing portion of the electromagnetic spectrum which consists of lower frequency signals that do not have enough energy to break chemical bonds in cells or DNA. (PPL Electric Statement No. 1A, p. 5, line 15 to p. 6, line 6; PPL Electric Statement No. 1B, p. 5, line 15 to p. 6, line 6)

19. There is nothing unusual about the RF fields from the AMI meters being deployed by the Company. (PPL Electric Statement No. 1A, p. 10, lines 10-11; PPL Electric Statement No. 1B, p. 10, lines 12-13)

20. RF fields come from many sources in our everyday environments, including AM/FM radio, television broadcast, cell phones and their communication networks, portable phones, garage door openers and wifi networks. (PPL Electric Statement No. 1A, p. 5, line 22 to p. 6, line 6; p. 10, lines 11-14; PPL Electric Statement No. 1B, p. 5, line 22 to p. 6, line 6; p. 10, lines 13-16)

21. Dr. Davis testified that the FCC has determined safe public exposure levels for RF fields from devices that transmit RF signals, such as the AMI meters. (PPL Electric Statement No. 1A, p. 8, lines 8-10; PPL Electric Statement No. 1B, p. 8, lines 13-15)

22. The FCC safe public exposure limits are based on evaluations of the body of scientific research on RF fields and were adopted in consultation with other federal agencies, including the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA). (PPL Electric Statement No. 1A, p. 8, lines 10-21; PPL Electric Statement No. 1B, p. 8, line 15 to p. 9, line 3)

23. Based on the engineering specifications for the Landis & Gyr AMI meter being deployed by the Company, Dr. Davis calculated that the levels of RF fields from the AMI meters are 98,000 times lower than the RF exposure safety limits established by the FCC. (PPL Electric Statement No. 1A, p. 11, line 21 to p. 12, line 1 ; PPL Electric Statement No. 1B, p. 12, lines 1-4; *see* PPL Electric Exhibit CD2)

24. As a result, Dr. Davis found that “the RF field levels from the AMI meters being used by PPL Electric more than comply with the applicable FCC RF exposure limit.” (PPL Electric Statement No. 1A, p. 9, lines 10-11; PPL Electric Statement No. 1B, p. 9, lines 14-15)

25. Moreover, the RF signals from the AMI meter are of very short duration and will occur for only a total of 84 seconds over a 24-hour period. (PPL Electric Statement No. 1A, p. 7, lines 21-23; PPL Electric Statement No. 1B, p. 7, lines 21-23)

26. Dr. Davis also testified that there are eight television broadcast towers with a 50 mile radius of 825 Christine Lane. (PPL Electric Statement No. 1A, p. 11, lines 6-7; PPL Electric Statement No. 1B, p. 11, lines 8-10)

27. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at the Complainants' residence are 35 times higher than the RF signals from the AMI meter. (PPL Electric Statement No. 1A, p. 11, lines 7-13; PPL Electric Statement No. 1B, p. 13, lines 10-15; *see* PPL Electric Exhibit CD-5)

28. Dr. Davis also testified that RF exposure from a cell phone used near the head can be over 260,000 times higher than the average RF fields from the AMI meters. (PPL Electric Statement No. 1A, p. 10, lines 22-23; PPL Electric Statement No. 1B, p. 11, lines 1-2; PPL Electric Exhibit CD-4)

29. There is no reliable scientific basis in physics, biophysics, bioelectromagnetics or RF bioelectromagnetics to conclude that the very low levels of RF fields from the AMI meters being deployed by the Company can or will cause any adverse thermal or non-thermal biological effects in people. (PPL Electric Statement No. 1A, p. 12, lines 3-6; PPL Electric Statement No. 1B, p. 12, lines 6-9)

30. Dr. Mark Israel is an eminent physician and medical researcher. (PPL Electric Statement No. 2A, p. 1, line 5 to p. 3, line 2; PPL Electric Statement No. 2B, p. 1, line 5 to p. 3, line 2)

31. Dr. Israel received his undergraduate degree from Hamilton College and his medical degree from the Albert Einstein College of Medicine, and he completed his medical training at Harvard Medical School. (PPL Electric Statement No. 2A, p. 1, lines 16-20; PPL Electric Statement No. 2B, p. 1, lines 16-20)

32. Dr. Israel is Professor of Medicine, Pediatrics, and Molecular and Systems Biology at the Dartmouth Medical School and the Executive Director of the Israel Cancer Research Fund in New York, an international charitable fund for medical and scientific research

programs. (PPL Electric Statement No. 2A, p. 1, lines 11-14; PPL Electric Statement No. 2B, p. 1, lines 11-14)

33. Dr. Israel is board certified and licensed to practice medicine. (PPL Electric Statement No. 2A, p. 3, lines 3-6; PPL Electric Statement No. 2B, p. 3, lines 3-6)

34. Dr. Israel has conducted medical research for 40 years in a wide variety of areas, including systems biology, biochemistry, cell biology, cancer, molecular biology, and molecular genetics and has published over 245 medical research studies in leading peer-reviewed scientific journals. (PPL Electric Statement No. 2A, p. 3, line 9 to p. 4, line 2; PPL Electric Statement No. 2B, p. 3, line 9 to p. 4, line 2)

35. Dr. Israel also has taught medicine and science for more than 30 years to medical students, graduate students, interns, residents, and practicing physicians subjects in a number of fields, including endocrinology, immunology, hematology, neurology, cardiology, biochemistry, cell biology, genetics, molecular genetics, medical oncology, and radiation oncology. (PPL Electric Statement No. 2A, p. 3, lines 14-17; PPL Electric Statement No. 2B, p. 3, lines 14-17)

36. Dr. Israel testified that claimed symptoms related to EHS are more accurately described as “Idiopathic Environmental Intolerance” (“IEI”), in which “idiopathic” means “cause unknown,” rather than electromagnetic hypersensitivity. (PPL Electric Statement No. 2A, p. 12, line 13 to p. 13, line 7; PPL Electric Statement No. 2B, p. 12, lines 3-14) (emphasis added)

37. Dr. Israel noted the lack of any actual medical records supporting the Complainants’ claims. (PPL Electric Statement No. 2A, p. 8, lines 5-7; PPL Electric Statement No. 2B, p. 7, lines 20-22)

38. Dr. Israel evaluated the scientific research on IEI and testified that “[r]eliable studies dating back to at least 2002 and also recent reviews of the studies by experts and reviews

by expert panels of public health authorities have found IEI and the variety of symptoms attributed to it are not caused by exposure to RF fields.” (PPL Electric Statement No. 2A, p. 13, lines 10-12; PPL Electric Statement No. 2B, p. 12, lines 17-19)

39. In addition, Dr. Israel testified that the research on IEI has been evaluated by credible public health entities and expert groups, including the United Kingdom Health Protection Agency (2012), the Royal Society of Canada (2013), the New Zealand Ministry of Health (2015), and the European Commission’s Scientific Committee on Emerging and Newly Identified Health Risks (2015). Based on their reviews of the scientific research, these entities concluded there is no reliable scientific evidence that exposure to RF fields causes claimed IEI symptoms. (PPL Electric Statement No. 2A, p. 14, line 9 to p. 15, line 3; PPL Electric Statement No. 2B, p. 14, lines 4-21)

40. Dr. Israel also evaluated scientific research on RF fields and adverse health effects generally and examined controlled animal laboratory studies, which “provide a reliable basis for determining whether RF fields have the capability to cause or contribute to adverse health effects in animals,” such as cancer or adverse effects on growth, development, or reproduction. (PPL Electric Statement No. 2A, p. 9, line 2 to p. 10, line 20; PPL Electric Statement No. 2B, p. 8, line 16 to p. 10, line 11)

41. These well-designed and well-conducted studies found no such adverse health effects. (PPL Electric Statement No. 2A, p. 9, line 2 to p. 10, line 20; PPL Electric Statement No. 2B, p. 8, line 16 to p. 10, line 11)

42. Dr. Israel further reported that the World Health Organization and a number of other public health authorities have concluded that the scientific research on RF exposures from cell phone use, which are far higher than the RF from PPL Electric’s smart meters, has not

shown that RF fields cause adverse health effects. (PPL Electric Statement No. 2A, p. 11, lines 8-22; PPL Electric Statement No. 2B, p. 10, line 22 to p. 11, line 13)

43. Several U.S. state public health authorities also have investigated claims about health effects from smart meters and have concluded that there is no credible scientific evidence that RF fields from smart meters will cause or contribute to any adverse health effects. (PPL Electric Statement No. 2A, p. 12, lines 1-7; PPL Electric Statement No. 2B, p. 11, lines 14-20)

44. Dr. Israel also reviewed all of the exhibits offered by Donna Bervinchak and found that none of these exhibits are actual scientific studies and most appeared to be taken from activist websites. (PPL Electric Statement No. 2A, p. 15, lines 4-23)

45. Dr. Israel testified that these exhibits lack scientific objectivity, do not offer a balanced assessment of the scientific research on RF fields, and do not provide scientifically reliable or useful data for reaching conclusions about RF fields and the causation of any symptom or health effect. (PPL Electric Statement No. 2A, p. 16, lines 4-7)

46. As a medical doctor and scientific researcher, Dr. Israel would not rely on any of these documents. (PPL Electric Statement No. 2A, p. 16, lines 1-4)

47. There is no reliable medical basis to conclude that RF fields from the AMI meters being used by PPL Electric will cause or contribute to the development of illness or disease. (PPL Electric Statement No. 2A, p. 16, lines 19-22; PPL Electric Statement No. 2B, p. 15, lines 12-15)

48. There is no reliable medical basis to conclude that RF fields from the AMI meter being used by PPL Electric would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainants, or any other adverse health effects. (PPL Electric Statement No. 2a, p. 17, lines 4-6; PPL Electric Statement No. 2B, p. 15, lines 19-21)

49. The Complainants also have raised issues about whether the new AMI meter is unsafe and would cause fires. (Tr. 7)

50. The new AMI meters actually are equipped with software and mechanisms that better alert the Company if there is an issue with overheating. Specifically, there is a heat alarm set up within the meter, so when the temperature of the meter hits an established level, the Company is alerted of the issue. (Tr. 54)

51. Further, PPL Electric takes 15-minute interval temperature readings from the meter, so it can track the meter's temperature and "ensure that there [are] not accelerated temperatures." (Tr. 54)

52. PPL Electric also evaluated the safety of the RF Mesh meters before selecting it as the Company's new AMI technology. (Tr. 55)

53. The Company performed substantial testing to ensure that the new AMI meters could sustain higher temperatures in "high-stress environment[s]" and in situations where there is a faulty connection with the customer's meter base. (Tr. 55)

54. PPL Electric witness Scott Larson, who is a Senior Engineer with the Company, testified that the new AMI meter is certified by Underwriters Laboratories ("UL") and meets the requirements of the American National Standards Institute ("ANSI"). (Tr. 54)

55. The new AMI meter to be installed by the Company is not a fire or safety hazard. (Tr. 54-55)

56. The Complainants also have raised privacy issues with the new AMI meter. (Tr. 7, 10)

57. PPL Electric's witness William Hennegan, who is the Manager of AMI Business Integration with the Company, testified that as a part of its Smart Meter Plan proceeding, the

Company filed a detailed AMI Customer Privacy Policy, which sets forth the data PPL Electric will collect through the new smart meter, the steps the Company will take to protect the data, and the ways in which PPL Electric will use the data. (Tr. 41-43; PPL Electric Exhibit No. 5)

58. Consistent with that policy, the Company will collect data on the amount of electricity used and significant event information, such as outages, voltage, heat alarms, and meter tampering alerts. (Tr. 41-42; PPL Electric Exhibit No. 5, Section 1.2)

59. In addition, the Company takes several steps to protect customers' data from public disclosure. (Tr. 42)

60. PPL Electric employs security practices that are all in compliance with the National Institute of Standards and Technology ("NIST"). (Tr. 42)

61. Moreover, the Company encrypts the customers' data and uses firewalls to prevent unauthorized persons from accessing the data. (Tr. 42)

62. PPL Electric also has established "authentication and access control," which are "very strict rules about who can have access to the data." (Tr. 42)

Appendix B – Proposed Conclusions of Law

1. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a). It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

2. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence that makes the existence of a contested fact is more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008) (citation omitted).

3. A person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, “taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive”; rather, the person must demonstrate by a preponderance of the evidence that such exposure actually causes adverse health effects. *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Cntys.*, 1992 Pa. PUC Lexis 160, at *210-11 (June 29, 1992) (Initial Decision) (“*Woodbourne-Heaton*”).

4. In AMI meter-related matters, the Commission has held that “[t]he Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Order entered Sept. 3, 2015).

5. Section 701 of the Public Utility Code provides that “any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa. C.S. § 701.

6. Section 1501 of the Public Utility Code states, in pertinent part, that:

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. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. . . .

Id. § 1501.

7. The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

8. When presented with a challenge to an AMI meter installation, the Commission has pronounced that “[t]he ALJ’s role . . . will be to determine based on the record in this particular case, whether there is sufficient evidence to support a finding that the Complainant was adversely affected by the smart meter or whether [the utility’s] use of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances in this case.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 23 (Order entered Jan. 28, 2016) (citing *Woodbourne-Heaton*, 1992 Pa. PUC Lexis 160, at *12-13).

9. Under Pennsylvania’s “Walker Rule,” it is well-established that “[h]earsay evidence, properly objected to, is not competent evidence to support a finding.” *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) (citations omitted).

10. Even if hearsay evidence is “admitted without objection,” the ALJ must give the evidence “its natural probative effect and may only support a finding . . . if it is corroborated by any competent evidence in the record;” as “a finding of fact based solely on hearsay will not stand.” *Id.* at 370 (citations omitted).

11. The Complainants have failed to sustain their burden of proof that installing the new AMI meter would violate the Public Utility Code or any Commission regulation or order. *See* 66 Pa. C.S. § 332(a), 701.

12. PPL Electric is legally required to install the RF Mesh meter on the premises by Act 129 and Commission orders. *See* 66 Pa. C.S. § 2807(f); *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655, pp. 9, 14 (Order entered June 24, 2009) (“*Smart Meter Implementation Order*”).

13. Nothing in Act 129 permits a customer to “opt-out” of a smart meter installation. *See, e.g., Starr v. PECO Energy Co.*, Docket No. C-2015-2516061, p. 11 (Order Entered Sept. 1, 2016).

14. The Commission previously determined that the Company’s existing PLC meters are not compliant with Act 129 and the Commission’s *Smart Meter Implementation Order*. *See Petition of PPL Electric Utilities Corporation for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123945, p. 24 (Order entered June 24, 2010) (“*2010 Smart Meter Order*”).

15. Under the Company's Commission-approved Smart Meter Plan, PPL Electric must replace all of the PLC meters with the RF Mesh meters, which the Commission declared as meeting all of the requirements of Act 129 and the Commission's *Smart Meter Implementation Order*. See *Petition of PPL Electric Utilities Corp. for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781, p. 24 (Order Entered Sept. 3, 2015) ("2015 Smart Meter Order").

16. If the Company does not install the new RF Mesh meter on the property where the Complainants reside in accordance with the Commission-approved deployment schedule, PPL Electric may violate the Commission's *2010 Smart Meter Order*, *2015 Smart Meter Order*, and *Smart Meter Implementation Order*.

17. The Complainants have failed to demonstrate that the new AMI meter causes, contributes to, or exacerbates any adverse health effect.

18. The Complainants have failed to sustain their burden of proof that installing the new AMI meter would constitute unsafe or unreasonable service in violation of 66 Pa. C.S. § 1501.

19. PPL Electric is permitted under Rule 2F of its Commission-approved to access the Complainants' property for the purpose of installing the new AMI meter. (PPL Electric Exhibit No. 6) (emphasis added)

20. Public utilities' tariffs have the force and effect of law and are binding on the utilities and their customers. See *PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386, 402 (Pa. Cmwlth. 2006) (citing 66 Pa. C.S. § 1303 and *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995)).

21. The Public Utility Code, the Commission's regulations, and PPL Electric's tariff expressly permit the Company to terminate service if a customer fails to provide the Company with access to the property in order to replace the meter. *See* 66 Pa. C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); (PPL Electric Exhibit No. 7).

22. The Commission has exclusive jurisdiction over the Complainants' issues with the new AMI meter. *See* 66 Pa. C.S. §§ 501, 2807(f); *see, e.g., Cnty. of Chester v. Phila. Elec. Co.*, 218 A.2d 331, 332-33 (Pa. 1966); *Duquesne Light Co. v. Upper St. Clair Twp.*, 105 A.2d 287, 291-93 (Pa. 1954); *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996, 1005 (Pa. Cmwlth. 2007); *UGI Utils., Inc. v. City of Reading*, 2017 Pa. Commw. LEXIS 1099, at *9-14 (Pa. Cmwlth. 2017).

Appendix C – Proposed Ordering Paragraphs

1. That the Formal Complaint filed by Donna Bervinchak against PPL Electric Utilities Corporation at Docket No. C-2016-2572824 is hereby dismissed in its entirety with prejudice.
2. That the Formal Complaint filed by J. Jude Bervinchak against PPL Electric Utilities Corporation at Docket No. C-2016-2577527 is hereby dismissed in its entirety with prejudice.
3. That this consolidated matter is marked closed.