

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Main Brief of John Kline, Complainant V. PPL Electric Utilities Corporation, Respondent

Harrisburg Pa. – Due May 16th, 2018

BRIEFING ORDER

An evidentiary hearing was held on March 29, 2018 at Docket No. C-2017-2621072. The parties are given leave to file main briefs by May 16, 2018 and reply briefs by June 1, 2018. Briefs shall comply with the requirements of 52 Pa. Code §§ 5.501 and 5.502 except that proposed findings of fact and conclusions of law are requested but not required. Briefs should address the following issues: 1) whether smart meters cause safety and fire hazards and have a negative health impact; 2) whether involuntary installation of smart meters or the termination of service for inability to gain access to install a smart meter is unreasonable service in violation of 66 Pa. C.S. § 1501; and 3) whether Complainant has a legal right to opt out of a smart meter installation on his service property.

**To the Honorable Elizabeth H. Barnes
Administrative Law Judge**

**Does the PUC have the right to decide what is best for the citizens of
Pennsylvania when it comes to their Health, Safety and Well Being?**

John Kline
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STATEMENT OF THE CASE

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

On September 13, 2017, PPL Electric filed its Answer to the Complaint.

On October 3, 2017, a Notice was issued scheduling a telephonic hearing for January 31, 2018, before Administrative Law Judge Elizabeth H. Barnes (the "ALJ").

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

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

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

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

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

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

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

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

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

On March 27, 2018, the Complainant sent additional exhibits (i.e., Complainant's Exhibits GGG and E1HH) via email to PPL Electric.

On March 28, 2018, PPL Electric filed a Motion in Limine to exclude the Complainant's exhibits.

The parties engaged in discovery at various points in the proceeding before the evidentiary hearing.

On March 29, 2018, the telephonic evidentiary hearing was held as scheduled at 10:00 AM.

On March 30, 2018, the ALJ issued a Briefing Order setting forth requirements for the Briefs to be submitted in this proceeding.

Main Brief of John Kline, Complainant V. PPL Electric Utilities Corporation, Respondent

A. Request to Impeach the Professional Expert Witness

- Dr. Christopher C. Davis, Ph.D.
- Dr. Mark A. Israel, M.D

I request the impeachment of Dr. Christopher C. Davis, Ph.D. and Dr. Mark A. Israel, M.D based on the fact that they are biased because of financial interest and should be considered professional witnesses based on the amount of previous and future hearings they attended or will be attending, as professional witnesses. Both Witnesses testimonies should be disqualified due to their financial interest and previous relationships with the Respondent and other Electric Distribution companies in similar cases. Both witnesses have testified previously on behalf of the calling party; prior testimony gives rise to both an inference of friendliness to the party and an inference of bias in favor of the party based upon an expectation of future employment. Both witnesses derive a significant portion of their total income from litigated matters

- Dr. Christopher C. Davis, according to his testimony (transcript page 124 through 129) admitted to attending at least 10 trials as a witness, and has 7 or 8 more scheduled. Dr. Davis stated “I’m Compensated at \$400.00 per hour for his active work in these cases. And I do a great deal of background work in connection with these cases which I receive more compensation” This hearing lasted 5 hours which is \$2000.00 in compensation not including the time he took to prepare his testimony, research my exhibits and consult with PPL Electric regarding the case. He also made mention to that that his current employment allows him to be a consultant (transcript page 131) indicating that he work he does for these trials is professional consulting work. The amount of compensation Dr. Davis would receive for 17 or 18 trials could derive a significant portion of his total income.
- Dr. Mark A. Israel, M.D according to his testimony (transcript page 155 through 157) admitted to attending 4 hearings in addition to this hearing plus 3 or 4 more. As far as future hearings schedules he stated ““It’s something in between two and three or six and seven, I don’t know.” Dr. Israel’s compensation is \$500.00 an hour including time in court and all research. This hearing lasted 5 hours which is \$2500.00 in compensation not including the time he took to prepare his testimony, research my exhibits and consult with PPL Electric regarding the case. The amount of compensation Dr. Israel would receive for 15 or 16 trials could derive a significant portion of his total income.

The testimony of these experts should be considered suspect, they were selected on account of their ability to express a favorable opinion, which, there is great reason to believe is in many Instances the result alone of the compensation received and the bias growing out of it.

B. Whether smart meters cause safety and fire hazards and have a negative health impact

1) Pa. PUC docket # C-2015-2475023 ((Exhibit Kline 3D)

The ruling by Administrative Law Judge Darlene D. Heep. In the decision, Judge Heep said that “The preponderance of the evidence does suggest that some other aspect of the Peco smart meters is inimitably perceptible by and contrary to the health and well-being of the individual, Ms. Povacz.” In addition, Judge Heep ruled that the complainant could move her meter and while the location of the meter socket is the choice of the customer, it would be unreasonable to require a customer to pay PECO's expenses related to the customer moving a PECO facility that is detrimental to the customer's health. Requiring a utility to move its facilities under such circumstances in compliance with 66 Pa.C.S. § 1501 is not unprecedented. Also, "It is well settled that a utility must bear the expense for the repairs and improvements based upon the statutory requirement that a utility provide reasonable and adequate service”

In this ruling both the consumer and the utility company are bearing the cost to move the meter. This court should rule that anyone who currently does not have a smart meter are not subject to immediate termination of service since the depreciation schedule is not to exceed 15 years or 2023. This would prevent unnecessary costs for both the consumers and the Utilities under this type of ruling, and give the legislative process time to run its course, otherwise the financial impact for the utility companies could be huge. Of the six bills that were introduced, some were for “Opt-Out” options and others were to repeal the entire mandate. If these bills are to pass then the utility companies would bear the financial burden to change the newly installed meters. Delaying these terminations would be beneficial to all and give additional time for more suitable research to be completed. It would be the ethical thing to do.

2) Safety / Fire Hazards

“Typical gauge electrical wiring that provides electricity to buildings (60 Hz power) is not constructed or intended to carry high frequency harmonics that are increasingly present on normal electrical wiring...

The use of smart meters will place an entirely new and significantly increased burden on existing electrical wiring because of the very short, very high intensity wireless emissions (radio frequency bursts) that the meters produce to signal the utility about energy usage... “

“Reports detail that the meters themselves can smoke, smolder and catch fire, they can explode, or they can simply create over-current conditions on the electrical circuits... “Electrical wiring was never intended to carry this - what amounts to an RF pollutant - on the wiring. The higher the frequency, the greater the energy contained.”

“Faulty wiring, faulty grounding or over-burdened electrical wiring may be unable to take the additional energy load.”

In his Testimony Mr. Larson from PPL Electric Corporation stated that (Transcript page 87) “the meter itself is not a fire hazard in any way. A lot of issues that have occurred in the past, the root cause came down to loose connections within the meter base. So there would be rapid heat built on the loose connections within the meter base. However he did not present any evidence to prove this. In addition, Mr. Larson stated (Transcript Page 88) “We monitor the temperature in 15 minute intervals to make sure there is no rapid heat rise and then also we have alarms set within the meter programming.” “So once a certain threshold is ever hit then we could remedy the situation. Mr. Larson also stated that Transcript Page 90) “the meter itself is set up to a threshold of 85 degrees Celsius. If that tolerance is hit, within - I believe its two hours, a signal is sent from the meter back to the head in the system. So once our head of the system reads it, we then issue that out to a trouble man to be able to deal with it.” During Cross examination he admitted that between the time when it reaches the temperature threshold and the 2 hour period when you send someone out, it could get extremely hot enough where it can actually cause a fire. He stated that “I guess there is a possibility.” (transcript page 91(

80 degrees Celsius is hot enough to give someone serious burns if touched, after it reaches that threshold, the temperature could continue to rise and could cause a fire before anyone is ever notified. A customer’s house could burn down between the 2 to 3 hour time period when they decide to send someone out.

3) Safety / Hacking

When asked if the smart meters communicate with other appliances Mr. Larson from PPL Electric responded “they do not currently.” Also stated that “these meters do not currently, they do not speak to other devices.”

“Currently” indicates that they are not set up that way at this time, However, when the mesh network is completely in place they could be set up to collect multiple data points, that is what they were designed to do.

When this data is collected it is vulnerable to hacking whether or not it is encrypted. In Part 6 of my testimony I gave numerous examples of encrypted data being hacked so the claim that PPL makes regarding our data being secure because it is encrypted is meaningless.

4) Safety / Medical and Health Concerns

As stated in part 7 of my testimony the range of health effects from smart meters and smart grid is no mystery to many of our federal government agencies, Medical Experts and scientific experts. There is no doubt in anyone’s mind that these emissions have an enormous impact on human and environmental biology. The evidence of health effects is overwhelming, when looking at independent studies on this issue, but even the biased, industry funded studies show increase in cancer. FCC “Safety” Standards are outdated, When these guidelines were developed, a cell phone was the size of a brick and there was no Wi-Fi at the coffee shop. Times have changed. The laws have not. Currently there are no national or international “standards” for safe levels of the radiation emitted by wireless or microwave devices. Instead, the US government adopted “guidelines” developed by industry based on decades old research. Guidelines have a

much lower certainty than a “standard” as proper long term safety testing was not done to ensure the public was protected from all possible harm.

In fact, no “safe” level has been scientifically determined for children or pregnant women. Therefore, the claim that a device “meets government standards” or that radiation levels are “FCC compliant” gives a false impression of safety.

As stated in my testimony there is a long list of symptoms associated with EMF exposure, there is overwhelming scientific evidence of harm from smart meter and other non-ionizing, non-thermal radiation that the industry and our Government deem to be “safe”. Many Government and Scientific organizations have stated their concern over the lack of information on non-thermal effects of EMF/RF waves.

I would like to refer to the following exhibits:

- (Exhibit Kline P) - EPA-Letter-Stating-FCC-Guidelines-are-only-based-on-Thermal-Effects
- (Exhibit Kline S) - World health Organization - The WHO/International Agency for Research on Cancer (IARC) has classified radiofrequency electromagnetic fields as possibly carcinogenic to humans, based on an increased risk for glioma, a malignant type of brain cancer, associated with wireless phone use.
- (Exhibit Kline 3E) - GAO One Page Highlights - The United States Government Accountability Office Report to Congressional Requesters in July of 2012 recommended that Exposure and Testing Requirements for Mobile Phones Should Be Reassessed.
- (Exhibit Kline 3G) – Press advisory American Academy of Environmental Medicine - “More independent research is needed to assess the safety of ‘Smart Meter’ technology,” said Dr. Amy Dean, board certified internist and President-Elect of the AAEM. “Patients are reporting to physicians the development of symptoms and adverse health effects after ‘Smart Meters’ are installed on their homes. Immediate action is necessary to protect the public’s health.”
- (Exhibit Kline U) - HEALTH IMPACTS OF RADIO FREQUENCY EXPOSURE - The California council on Science and Biology 2011 report on HEALTH IMPACTS OF RADIO FREQUENCY EXPOSURE FROM SMART METERS, is a report that many utilities use to justify the safety of the meters they are installing, however the report says on page 22 “FCC guidelines protect against thermal effects of RF exposure. Many non---thermal effects have been suggested, and additional research is needed to better understand and scientifically validate them.
- (Exhibit Kline 3H) - Journal of Microscopy and Ultrastructure - The report states: In 1996, the FCC adopted the IEEE 1991 standard with some details from the 1986 NCRP Report as expo-sure limits in the United States. Nineteen years after the FCC exposure limits were published, based on documents published 24 and 29 years previously, the legal exposure limit has remained unchanged. Yet during these decades an enormous body of scientific studies was published reporting risk well below the legal exposure limit. The Institute of Electrical and Electronic Engineers (IEEE) is an industry professional organization, as is the National Council on Radiation Protection (NCRP). Neither organization had medical or public health expertise.
- (Exhibit Kline – L) - International Appeal - Scientists call for Protection from Non-ionizing Electromagnetic Field Exposure - Numerous recent scientific publications have shown that EMF affects living organisms at levels well below most international and national guidelines. Effects include increased cancer risk, cellular stress, increase in harmful free radicals, genetic damages, structural and functional changes of the reproductive system, learning and memory deficits,

neurological disorders, and negative impacts on general well-being in humans. Damage goes well beyond the human race, as there is growing evidence of harmful effects to both plant and animal life.

- **(Exhibit Kline N1) - The American Academy of Pediatrics (AAP) - A letter from the American Academy of Pediatrics to the FCC and FDA - The American Academy of Pediatrics (AAP), a non-profit professional organization of 60,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists dedicated to the health, safety and well-being of infants, children, adolescents, and young adults appreciates this opportunity to comment on the Proposed Rule "Reassessment of Exposure to Radiofrequency Electromagnetic Fields Limits and Policies" published in the Federal Register on June 4, 2013.**

During the proceedings even Dr Israel stated that he thinks it is essential for any new standards for cell phones and other wireless devices be based on protecting the youngest and most vulnerable populations to ensure they are safeguarded throughout their lifetime (transcript page 150,151)

Almost every report regarding RF/EMF safety has this type of wording, how can anyone in a Government agency or Political position, who are paid by their citizens and sworn to protect us, make something mandatory that is not 100% guaranteed to safe?

5) Safety / Medical and Health Studies

When it comes to EMF issues, one of the most frequently heard phrases is "There is no evidence to support EMFs having health effects" or simply "There is no conclusive evidence".

This is completely wrong; there is an enormous body of evidence out there, but public and even academic awareness seems to be very poor.

I would like to refer to the following exhibits:

- **(Exhibit Kline – M) TOXICOLOGY AND CARCINOGENESIS STUDIES - The US Department of Health and Human Services / national Toxicology Program Conducted a 10 year, 25 million dollar study to help clarify any potential health hazards, including cancer risk, from exposure to cell phone radiofrequency radiation, and to better inform protection for public health. The nomination for NTP to study cell phone radiofrequency radiation was made by the U.S. Food and Drug Administration (FDA). "The findings of brain tumors (gliomas) and malignant schwann cell tumors of the heart in the NTP study, as well as DNA damage in brain cells, present a major public health concern because these occurred in the same types of cells that have been reported to develop into tumors in epidemiological studies of adult cell phone users," stated Ronald L. Melnick, PhD, the National Institutes of Health toxicologist who lead the NTP study design and senior advisor to the Environmental Health Trust.**
- **(Exhibit Kline – O) - HB2872 - This study prompted the Oklahoma Legislature to draw up HOUSE BILL 2872, currently on the floor which offers a choice of the type of utility meters to be installed and**

operated on their places of residence, property or business; among the choices offered shall be the installation or ongoing operation of a non-transmitting electromechanical analog meter

- (Exhibit Kline – R) – Naval Medical Research Institute - The known effects of non-ionizing microwave radiation is not new. By 1971, the US Naval Medical Research Institute (NMRI) referenced 2300 research articles listing in excess of 120 illnesses attributed to radio frequency and non-ionizing microwave radiation. Biography of Reported Biological Phenomena ('Effect') and Clinical Manifestations Attributed to Microwave and Radio-Frequency Radiation, Research Report. MF12.524.015-0004B, Report No. 2. NMRI, National Naval Medical Centre (1971). Under the Freedom of Information Act, extracts from published US Defense Intelligence Agency Documents confirmed the NMRI research and stated: 'If the more advanced nations of the West are strict in enforcement of stringent exposure standards, there could be unfavorable effects on industrial output and military functions.
- (Exhibit Kline – Q) – EMF Studies NIH - All of these have been published on Pub Med.gov – the US National Library of Medicine National Institutes of health. I have listed well over 200 studies, yet the so called “experts” will still tell you there is not enough evidence.
- (Exhibit Kline 3C) – A review on Electromagnetic fields EMFs and the Reproduction System - The studies presented in this review referred to the effects of different exposures to EMFs on the reproductive system

There is an overwhelming amount of evidence available to help us make an educated decision and choice but those choices have been removed!

C. Whether involuntary installation of smart meters or the termination of service for inability to gain access to install a smart meter is unreasonable service in violation of 66 Pa. C.S. § 1501

1. Public Utility Code, 66 Pa.C.S. § § 501 and 1501

§ 57.28. Electric safety standards.

(A) (1) An electric utility shall use reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers, the public and others may be subjected to by reason of its provision of electric utility service and its associated equipment and facilities.

PPL Electric Utilities Corporation, by its own admission, in the Response to Interrogatories of John Kline, set 1 (Exhibit Kline – A), states that PPL Electric has not funded, sponsored, or been personally involved in any studies regarding the safety of the new automated metering infrastructure (“AMI”) meters. it is also not aware of any such studies, that the PA PUC was involved in. How has a reasonable effort been made if there has been no personal effort on PPL Electric Utilities Corporation part? This violates § 57.28. Electric safety standards.

2. The statutes of Pennsylvania Title 18 - CHAPTER 5 - GENERAL PRINCIPLES OF JUSTIFICATION § 507 paragraph (e)

PPL Electric claimed that is was a safety concern when I locked my meter box which is my property. Is it a safety concern when someone has their meter behind a locked gate? Is it a safety concern when someone has their meter in a locked utility room? This was nothing more than an intimidation tactic and threat.

I have a right to protect myself and property according to The statutes of Pennsylvania Title 18 - CHAPTER 5 - GENERAL PRINCIPLES OF JUSTIFICATION § 507 paragraph (e)

(e) Use of device to protect property.--The justification afforded by this section extends to the use of a device for the purpose of protecting property only if:

(1) the device is not designed to cause or known to create a substantial risk of causing death or serious bodily injury;

(2) the use of the particular device to protect the property from entry or trespass is reasonable under the circumstances, as the actor believes them to be; and

(3) the device is one customarily used for such a purpose or reasonable care is taken to make known to probable intruders the fact that it is used.

3. Title 66 / CHAPTER 15 / SUBCHAPTER A / § 1502. Discrimination in service.

No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.

The PA PUC, by making the installation of Smart meters mandatory for only some of the electric utility distribution companies in Pennsylvania is giving a preference or advantage to any person who is not required to have a smart meter installed because the live in area that has an electric utility distribution company with under 100,000 customers.(Exhibit Kline 2K) HB2200 states:

(6) THE PROVISIONS OF THIS SUBSECTION SHALL NOT APPLY TO AN ELECTRIC DISTRIBUTION COMPANY WITH 100,000 OR FEWER CUSTOMERS.

Since PPL Electric Utilities Corporation is the only electric distribution company in my/our area, it is a monopoly since I do not have a choice to switch to another company. Therefore there is Discrimination in service since not all Pennsylvania citizens are required to have these meters installed and I must, based on the geography where I own a home. I ask the court, how can a Pa law be mandated if it is not mandated to all citizens of Pennsylvania? In Lititz Pa., for example, there are some residents who are required to have a smart meter and their neighbors across the street do not, since they are serviced by a smaller distribution company. How can a regulation discriminate against any person or corporation just based on where they live or do business?

4. Violation 14th amendment of the United States Constitution Section 1 (Exhibit Kline – K)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Cornell Law School describes equal protection as follows: (Exhibit Kline –K)

The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution prohibits states from denying any person within its territory the equal protection of the laws. This means that a state must treat an individual in the same manner as others in similar conditions and circumstances. The Federal Government must do the same, but this is required by the Fifth Amendment Due Process.

The point of the equal protection clause is to force a state to govern impartially—not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective. Thus, the equal protection clause is crucial to the protection of civil rights.

5. Violation of the (Exhibit Kline Y) - Federal Trade Commission Act - Section 5: Unfair or Deceptive Acts or Practices

The Federal Trade Commission Act list the following as unfair and deceptive practices

Unfair Practices

An act or practice is unfair where it

- causes or is likely to cause substantial injury to consumers;
- cannot be reasonably avoided by consumers; and
- is not outweighed by countervailing benefits to Consumers or to competition.

Deceptive Practices

An act or practice is deceptive where:

- a representation, omission, or practice misleads or is likely to mislead the consumer;
- a consumer’s interpretation of the representation, omission, or practice is considered reasonable under the circumstances; and
- the misleading representation, omission, or practice is material.

“The standards for unfairness and deception are independent of each other. While a specific act or practice may be both unfair and deceptive, an act or practice is prohibited by the FTC if it is either unfair or deceptive.”

By omitting and not properly educating the customers on the possible dangers of these meters as laid out in my testimony, PPL Electric is guilty of both unfair and deceptive practices.

6) Legalities as Pertained to Privacy

When asked if the smart meters communicate with other appliances Mr. Larson from PPL Electric responded “they do not currently.” also stated that “these meters do not currently, they do not speak to other devices.”

“Currently” indicates that they are not set up that way at this time, However, when the mesh network is completely in place they could be set up to collect multiple data points, that is what they were designed to do.

i. Congressional Research Service

On February 3rd 2012 the Congressional Research Service published a report on Smart Meter Data: Privacy and Cybersecurity (Exhibit Kline – F). This report covers several areas where my/our rights as US citizens can be violated consumer data collected by residential smart meters.

The Congressional Research Service (CRS) works exclusively for the United States Congress, providing policy and legal analysis to committees and Members of both the House and Senate, regardless of party affiliation. As a legislative branch agency within the Library of Congress, CRS has been a valued and respected resource on Capitol Hill for more than a century.

The Congressional Research Service (CRS) serves as shared staff to congressional committees and Members of Congress. CRS experts assist at every stage of the legislative process — from the early considerations that precede bill drafting, through committee hearings and floor debate, to the oversight of enacted laws and various agency activities.

With public policy issues growing more complex, the need for insightful and comprehensive analysis has become vital. Congress relies on CRS to marshal interdisciplinary resources, encourage critical thinking and create innovative frameworks to help legislators form sound policies and reach decisions on a host of difficult issues. These decisions will guide and shape the nation today and for generations to come.

The summary of their report is as follows:

Fueled by stimulus funding in the American Recovery and Reinvestment Act of 2009 (ARRA), electric utilities have accelerated their deployment of smart meters to millions of homes across the United States with help from the Department of Energy’s Smart Grid Investment Grant program. As the meters multiply, so do issues concerning the privacy and security of the data collected by the new technology. This Advanced Metering Infrastructure (AMI) promises to increase energy efficiency, bolster electric power grid reliability, and facilitate demand response, among other benefits. However, to fulfill these ends, smart meters must record near-real time data on consumer electricity usage and transmit the data to utilities over great distances via communications networks that serve the smart grid. Detailed electricity usage data offers a window into the lives of people inside of a home by revealing what individual appliances they are using, and the transmission of the data potentially subjects this information to interception or theft by unauthorized third parties or hackers.

Unforeseen consequences under federal law may result from the installation of smart meters and the communications technologies that accompany them. This report examines federal privacy and cybersecurity laws that may apply to consumer data collected by residential smart meters. It begins with an examination of the constitutional provisions in the Fourth Amendment that may apply to the data. As we progress into the 21st century, access to personal data, including information generated from smart meters, is a new frontier for police investigations. The Fourth Amendment generally requires police to have probable cause to search an area in which a person has a reasonable expectation of privacy. However, courts have used the third-party doctrine to deny protection to information a customer gives to a business as part of their commercial relationship. This rule is used by police to access bank records, telephone records, and traditional utility records. Nevertheless, there are several core differences between smart meters and the general third-party cases that may cause concerns about its application. These include concerns expressed by the courts and Congress about the ability of technology to potentially erode individuals' privacy. I am presenting the entire report as evidence but would like to point out some key issues:

From Page 3 and 4 of the report

Detailed Information on Household Activities

Smart meters offer a significantly more detailed illustration of a consumer's energy usage than regular meters. Traditional meters display data on a consumer's *total* electricity usage and are typically read manually once per month.²³ In contrast, smart meters can provide *near real-time* usage data by measuring usage electronically at a much greater frequency, such as once every 15 minutes. Current smart meter technology allows utilities to measure usage as frequently as once every minute.²⁵ By examining smart meter data, it is possible to identify which appliances a consumer is using and at what times of the day, because each type of appliance generates a unique electric load "signature."²⁶ NIST wrote in 2010 that "research shows that analyzing 15-minute interval aggregate household energy consumption data can by itself pinpoint the use of most major home appliances."²⁷ A report for the Colorado Public Utilities Commission discussed an Italian study that used "artificial neural networks" to identify individual "heavy-load appliance uses" with 90% accuracy using 15-minute interval data from a smart meter.²⁸ Similarly, software based algorithms would likely allow a person to extract the unique signatures of individual appliances from meter data that has been collected less frequently and is therefore less detailed.²⁹ By combining appliance usage patterns, an observer could discern the behavior of occupants in a home over a period of time.³⁰ For example, the data could show whether a residence is occupied, how many people live in it, and whether it is "occupied by more people than usual."³¹ According to the Department of Energy, smart meters may be able to reveal occupants' "daily schedules (including times when they are at or away from home or asleep), whether their homes are equipped with alarm systems, whether they own expensive electronic equipment such as plasma TVs, and whether they use certain types of medical equipment." Figure 1, which appears in NIST's report on smart grid cybersecurity, shows how smart meter data could be used to decipher the activities of a home's occupants by matching data on their electricity usage with known appliance load signatures.

From page 40 and 41

"Deceptive" Privacy Statements

A utility that fails to comply with its own privacy policy may engage in a "deceptive" act or practice under Section 5 of the FTC Act. In *Facebook, Inc.*, the FTC alleged, among other things, that the social networking

site violated promises contained in its privacy policy when it made users' personal information accessible to third parties without users' consent.³⁴⁵ Facebook had claimed that users could limit third-party access to their personal information on the site. Despite this promise, applications run by users' Facebook friends were able to access the users' personal information. The Commission also charged that Facebook altered its privacy practices without users' consent, causing personal information that had been restricted by users to be available to third parties. This change, which allegedly "caused harm to users, including, but not limited to, threats to their health and safety, and unauthorized revelation of their affiliations" constituted both a "deceptive" and an "unfair" practice in the view of the Commission.³⁴⁶ Finally, the Commission alleged that Facebook had represented to users that it would not share their personal information with advertisers but had done so anyway.

In *Twitter, Inc.*, the FTC alleged that the social networking site engaged in "deceptive" acts when it violated claims made in its privacy policy about the security of consumer data by failing to "use reasonable and appropriate security measures to prevent unauthorized access to nonpublic user information." The Commission found that Twitter had permitted its administrators to access the site with easy-to-guess passwords and failed to limit the extent of administrators' access according to the requirements of their jobs. In a consent order, the company agreed not to misrepresent its privacy controls and to implement a comprehensive information security program that would be assessed by an independent third party.

As smart meter data becomes valuable to third parties, utilities may be tempted to sell or share this information with others to increase revenues and provide new services to their customers. If prohibited by the terms of the utility's privacy policy, it may be a "deceptive" act or practice for the utility to share a consumer's personal information with third parties without a consumer's consent.³⁵⁰ The FTC could also find deception when a utility represents that its privacy controls are capable of protecting smart meter data when, in fact, they are not.

From page 21

Assumption of the Risk—Consent

The third difference between traditional third-party cases and smart meters is the nature of services involved and whether the customer actually assumes the risk or consents to this information being shared with others. Assumption of the risk and consent are the two leading theories supporting the third-party doctrine. In *United States v. Miller*, the customer "assumed the risk" that the bank would turn over the bank records to government authorities.¹⁹³ That was a risk he took in doing business with the bank. As to the consent theory, one commentator asked and answered the question as follows: "When does a person's choice to disclose information to a third-party constitute consent to a search? So long as a person knows that they are disclosing information to a third-party, their choice to do so is voluntary and the consent valid."¹⁹⁴ With banking or telephone services, a customer has the option of transferring his business to another bank or another telephone carrier.¹⁹⁵ To the contrary, because electric utilities are essentially monopolies, the customer cannot simply switch services. The only way to avoid the recordation of his electric usage is to terminate his utility service altogether, an impracticable option in modern society. As one state court has noted:

Electricity, even more than telephone service, is a "necessary component" of modern life, pervading every aspect of an individual's business and personal life: it heats our homes, powers our appliances, and lights our nights. A requirement of receiving this service is the disclosure to the power company (and in this case an agent of the state) of one's identity and the amount of electricity being used. The nature of electrical

service requires the disclosure of this information, but that disclosure is only for the limited business purpose of obtaining the service. Why then are Utility companies forcing us into giving up more detailed, personal information?

This report also highlights other possible violations of United States Law:

- The Electronic Communications Privacy Act (ECPA) page 23
- The Stored Communications Act (SCA) page 24
- The Computer Fraud and Abuse Act (CFAA) page 28
- The Federal Trade Commission Act (FTC Act) page 29

ii. **Violation of United States Constitution - Amendment IV and CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA – Article 1 / Section 8**

United States Constitution - Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized

CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA – Article 1 / Section 8

Security From Searches and Seizures

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed by the affiant.

Smart meters and smart grid violate the 4th Amendment of the US Constitution and the CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA – Article 1 / Section 8 by warrantless-ly searching every electrical, water or gas appliance in the home including potentially the ability to search personal computers. A primary advantageous use of smart meters and smart grid to any government entity who wishes to do so, would be spying on US citizens in the sanctity of their own homes. This sets an unprecedented level of invasion of privacy and is in fact, according to the Constitution of the United States of America, illegal.

There are many Court cases that confirm Electronic Surveillance as a IV Amendment Violation which would also be a violation of the CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA – Article 1 / Section 8. I would like to point out a few examples

iii. **Case 1:13-cv-00851-RJL Document 48 Filed 12/16/13, Klayman V. Obama (Exhibit Kline G)**

WASHINGTON — A federal district judge ruled that the National Security Agency program that is systematically keeping records of all Americans’ phone calls most likely violates the Constitution, describing its technology as “almost Orwellian” and suggesting that James Madison would be “aghast” to learn that the government was encroaching on liberty in such a way. The judge, Richard J. Leon of Federal District Court for the District of Columbia, ordered the government to stop collecting data on the personal calls of the two plaintiffs in the case and to destroy the records of their calling history. “I cannot imagine a more ‘indiscriminate’ and ‘arbitrary’ invasion than this systematic and high-tech collection and retention of personal data on virtually every single citizen for purposes of querying and analyzing it without prior judicial approval,” Judge Leon wrote in a 68-page ruling. “Surely, such a program infringes on ‘that degree of privacy’ that the founders enshrined in the Fourth Amendment,” which prohibits unreasonable searches and seizures. The systematic and high-tech collection and retention of personal data on virtually every single citizen could also apply to the data that the smart meters collect.

iv. SUPREME COURT OF THE UNITED STATES - UNITED STATES v. JONES (Exhibit Kline H)

In United States v. Jones, the police used a GPS tracking device to track Jones’s movements for almost a month.¹⁸³ The majority, led by Justice Scalia, held that attaching a GPS device on a vehicle for the purpose of collecting information constituted a “search” under the Fourth Amendment. Justices Alito and Sotomayor both agreed that this was a search. Justice Sotomayor noted that “GPS monitoring generates a precise, comprehensive record of a person’s public movements that reflects a wealth of detail about familial, political, professional, religious, and sexual associations.”

“A person who knows all of another’s travels can deduce whether he is a weekly church goer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient receiving medical treatment, an associate of particular individuals or political groups—and not just one such fact about a person, but all such facts.”

With smart meters, police would have a rich source of personal data that reveals far more about a person than traditional analog meters. Understanding a person’s daily activities, including what appliances he is using, is a far leap from knowing his monthly energy usage. This is the difference between knowing about a single trip a person took and monitoring his movements over a month-long period.

v. United States v. KYLLO - certiorari to the united states court of appeals for the ninth circuit

(Exhibit Kline I)

In 2001, the Court held that warrantless use of the technology to view inside a home was prohibited by the Fourth Amendment. Warning that use of thermal imaging could disclose intimate details about personal activities, including “at what hour each night the lady of the house takes her daily sauna and bath, bath,”

Justice Scalia opined that the Fourth Amendment “draws ‘a Firm line at the entrance to the house.’ That line, we think, must be not only Firm but also bright.”

Justice Scalia first posited that “with very few exceptions, the question whether a warrantless search of the home is reasonable must be answered no.” Searches of the home were historically analyzed under the common law doctrine of trespass, but during the mid-20th century the Court instead anchored the Fourth Amendment to a conception of privacy. While this test may be difficult to apply in the context of automobiles, telephone booths, or other public areas, it is made easier when concerning the home:

Given the rich detail of smart meter data, which can reveal intimate details about the electric customer’s life, and the reality that electric customers have no true choice in whether or not to give the data to the utilities, courts would find this data beyond the warrantless reach of law enforcement.

D. Whether Complainant has a legal right to opt out of a smart meter installation on his service property

1) Implementing HB2200/Act 129 as mandatory

•Section 2807(f)(2) of the Public Utility Code, states:

(2) Electric distribution companies shall furnish smart meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

The emphasis is but on the word “shall” which is a “false imperative and can actually mean "may, will or must." (Exhibit Kline 3A) is a posting from the Federal Aviation Administration website titled “What's the only word that means mandatory”, states:

We call "must" and "must not" words of obligation. "Must" is the only word that imposes a legal obligation on your readers to tell them something is mandatory. Also, "must not" are the only words you can use to say something is prohibited. Who says so and why?

Nearly every jurisdiction has held that the word "shall" is confusing because it can also mean "may, will or must." Legal reference books like the Federal Rules of Civil Procedure no longer use the word "shall." Even the Supreme Court ruled that when the word "shall" appears in statutes, it means "may."

The Commission has interpreted this law to require smart meter installation by making the claim that the General Assembly intention was for the smart meter installs to be mandatory based on (In 66 Pa. C.S. §2807(f)(2),) the use of the word “shall” in the statute indicates the General Assembly’s direction that all customers will receive a smart meter.

I respectfully ask the court, if this law was meant to be mandatory then how come it does not state in the law that customers who refuse a smart meter will be penalized by having their electricity turned off? In fact, nowhere in the law does it list any consequences for consumers, yet we are the ones getting penalized.

In The Commonwealth of Pennsylvania, Legislative Journal dated WEDNESDAY, OCTOBER 8, 2008 (Exhibit Kline 2L), the date that HB 2200 was passed, It clearly states the intent of the law makers regarding the smart meter installations was that they were not mandated. Any reasonable person would be able to determine this by the following quotes:

Senator TOMLINSON (pg. 2626) – “It also contains language in there that we will have smart meters. It is not mandated, but it allows for the deployment of smart meters through a depreciation process, through new home construction process, and through the depreciation of 15 years, and for anyone who wants to purchase a smart meter which they feel will help them manage their electric load better.”

Senator BOSCOLA (pg. 2627) – “We also made sure that smart meters would not be mandated for every single ratepayer. Not only is that a smarter approach to smart meter deployment, but it will also save electric customers hundreds of millions of dollars paying for something that will not provide a real benefit in their own households.

Senator FUMO (pg. 2629) – “In addition, we did not mandate smart meters, but we made them optional. We did say in new construction, where they really are practical, they will be put in”

It is obvious by the quotes of these three Senators who voted for the bill, that their intention was not to make the smart meters mandatory yet the commission when implementing the law made it mandatory, but not for all, just for some which is Discrimination in service and does not give those who do not have a choice but to use these seven distribution companies, equal protection under the law.

In addition, the abuse of power that has been going on within the Pa legislature regarding this issue has also been downright criminal. How much influence has the utility companies had on PA State Representative Robert Godshall’s campaigns. As Chair of the PA House Consumer Affairs Committee, he has sat on opt out bills in the PA legislature for several legislative sessions, and also made verbal proclamations to others that he will never bring opt out bills to the floor for a vote, which should be an impeachable offence for depriving Pennsylvanians of their right to redress government and government agency oppressions that enable utility companies to harass and bully customers about cutting off electric service if they refuse smart meters. I present into evidence (Exhibit Kline 2B) from the website votesmart.org which shows that electric utilities were the 3rd top contributor in his last campaign with \$18,850 and the energy sector contributed a total of \$28,550. Is this and the fact that his son works for a utility company the reason he has not allowed bills , regarding smart meter opt-outs be voted on. This should have been investigated but it has been allowed to continue.

(Exhibit Kline 2A) which is a letter from Robert Godshall to York County resident Teresa Roh on June 17th 2017. In this letter he states “As of today there are no bills introduced or in the committee”. This is a flat out lie; the following bills have all been introduced and were blocked by Mr. Godshall and not allowed to be voted on.

- **(Exhibit Kline 2M) - HB 1565**
- **(Exhibit Kline 2N) - HB 1654**
- **(Exhibit Kline 2O) - HB 902**
- **(Exhibit Kline 2P) - HB 899**
- **(Exhibit Kline 2Q) - HB 396**
- **(Exhibit Kline 3B) - HB 394**

In addition, Mr. Godshall wrote the following: “The Public Utility Commission (PUC), the Energy Association of Pennsylvania (EAP) and the Office of the Small Business Advocate (OSBA) oppose legislation as enactment of any one would have a detrimental impact on the reliability of the electric distribution system and significantly increase costs to electric ratepayers. The EAP believes that this legislation “would make an abrupt and ill-advised shift in policy away from modernizing our electric system.” The OSBA and the Office of the Consumer Advocate (OCA) are concerned with the increased costs that consumers and small businesses will face if a utility company was required to implement an opt-out program and worry how those costs would be distributed. The OSBA and OCA agree that it would be ill-advised to restructure a program when its full implementation has not yet been completed as capital has already been spent by electric distribution companies to deploy smart meters in their respective service territories

The biggest hypocrisy is that Mr. Godshall would not stand for this type of bureaucracy when it came to the Insurance company and his own Cancer.

(Exhibit Kline Z) Is an Interview with Robert Godshall, regarding the “Right to Try Law and his own battle with cancer. Eleven years ago, at age 72, he was diagnosed with multiple myeloma, a type of bone cancer. His doctors told him to get his affairs in order. He’d be gone within a year.

But when Godshall learned some myeloma patients bought time with bone marrow transplants, he asked his doctors if he could get one, too. “No way,” they said, citing his advanced age.

Godshall, who had at that point been a member of the Pennsylvania state legislature for more than 20 years, made a few calls. He got the treatment. The experience convinced him that no terminally ill patient should ever hear “no way” again. Yet many cancer patients are hearing “no way” when it comes to smart meters.

He is quoted as saying “I just don’t feel that other people that aren’t in the Legislature shouldn’t have the same right I had,” he said in a recent interview.

Asked to handicap the bill's chances, Godshall said he had some favors to call in.

"I'll get it through," he said.

So once again, he is above the law and can call in favors for his own benefit. Mr. Godshall does not have to suffer through the ill effects of his illness but he is forcing many other citizens to do just that.

Mr. Godshall will be retiring in November 2018 and these bills will be introduced once again. This time without Mr. Godshall blocking the vote!

2) Rights and Responsibilities as a Utility Consumer

The Pennsylvania PUC Your Rights and Responsibilities as a Utility Consumer state the following:

As a residential utility customer, you have many important rights and responsibilities to ensure fair dealings between you and your utility company. This guide highlights your rights relating to

These rights and responsibilities include your right to:

* Safe and reliable utility service.

In addition the Pennsylvania PUC Mission Statement States: The Pennsylvania Public Utility Commission balances the needs of consumers and utilities; ensures safe and reliable utility service at reasonable rates; protects the public interest; educates consumers to make independent and informed utility choices; furthers economic development; and fosters new technologies and competitive markets in an environmentally sound manner.

Since the Court is part of the Pennsylvania Utility Commission I ask the following:

- How is the Pennsylvania Public Utility Commission balancing the needs of consumers and utilities when PPL and other utility companies are allowed to install these meters against the needs of many of their customers. (Exhibit 2F) lists 16 formal complaints regarding the installation of smart meters against PPL and over 80 complaints from all utility customers and this is only from the beginning of 2017, there are many more formal complaints on file and this does not include the amount of informal complaints or the amount of customers that simply called their utility company or the PUC but did not move forward due to being intimidated. This is not a matter of 5 or 10 people, there are thousands of citizens against the installation yet their needs are being ignored.
- How is the Pennsylvania Public Utility Commission ensuring safe and reliable utility service when PPL or the PUC have not requested, funded or been personally involved in any studies regarding the safety of the smart meters (admitted to in Exhibit A - PPL Electric Utilities Corporation response to Interrogatories of John Kline, set 1, questions 1-4 and 1-5) even though numerous customers have voiced concerns. Shouldn't the PUC involve the Pa Health Department in addressing the concerns of the Pennsylvania citizens regarding this matter?
- How is the Pennsylvania Public Utility Commission protecting the public interest and educating consumers to make independent and informed utility choices when we are told our independent and informed choice is illegal? Instead the PUC has taken away our ability, as reasonable citizens to make independent and informed utility choices, by the implementing HB2200/Act 129 as mandatory.
- It seems the only 2 statements in the mission statement that are being followed are furthering economic development; and fostering new technologies both in favor of the utility companies.

Conclusion

Almost every report regarding RF/EMF safety has this type of wording, how can anyone in a Government agency or Political position, who are paid by their citizens and sworn to protect us, make something mandatory that is not 100% guaranteed to safe? I should not have to prove that the smart meter has already had a medical effect on myself or my family, I should only need to show that there is a possibility of harm, for the court to rule in my favor.

I would like to offer as evidence:

- (Exhibit Kline 2R-1) which a picture of the current meter which is location on the outside of my bedroom wall.
- (Exhibit Kline 2R – 2) is a picture of where the meter is placed in reference to my inside wall.
- (Exhibit Kline 2I) Smart meter manual, pages 1 through 10.

This device complies with part 15 of the FCC rules. Operation is subject to the following three conditions:

- (1) This device may not cause harmful interference, and
- (2) This device must accept any interference received, including interference that may cause undesired operation.
- (3) For RF exposure, service personnel are to maintain a minimum of 20cm from the RF communications transmitter once installed.

An installation of the smart meter would be less then 20cm from me when I am sleeping. Can the court guarantee I will be 100% safe from RF/EMF's when I typically sleep with my head against the headboard and my hand between the headboard and the wall?

When asked about these guidelines during questioning, Dr. Davis stated (transcript page 116) "Twenty centimeters is more of an advisory statement then an actual standard. Measurement of the fields should be in milliwatts instead of centimeters. That's the number they should be concerned about." This biased opinion does not take away from the fact that these safety standards are set to protect the public. I do not believe Dr. Davis opinion should over rule the standards that are in place.

The Constitution Of The Commonwealth Of Pennsylvania

WE, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution.

ARTICLE I

DECLARATION OF RIGHTS

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE THAT -

Section 1.

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

Section 2.

All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness.

The United States of America Constitution's Preamble says the federal government was established to "form a more perfect union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity."

During these proceedings I have showed that I or my family would suffer irreparable injury if the ruling is not made in my favor, in addition substantial injury would be suffered by other interested parties. Therefore, a ruling in favor of this complaint would further the public interest. We have the right to make choices that we believe is best for our own health and safety. The PUC does not have the right to decide what is best for the citizens of Pennsylvania when it comes to their Health, Safety and Well Being?

I have presented thousands of examples of studies that have helped me make the determination that these meters could be unsafe and detrimental to my family's health. We have made many decisions in our lives to limit this exposure, such as not having a microwave, watching very limited television and turning off any Wi-Fi or cellular device off when not in use. Making these meters mandatory would take away our choices and not give us the right to insure domestic Tranquility, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity."

It is obvious that it is all about the money and protecting the utility companies while Pennsylvania citizens are allowed to be harassed and suffer the anxiety, stress and medical consequences of their lack of action regarding this issue. Has our government become just another corporation in the business of helping other corporations with their bottom line? Do ethics have any place in our government and corporations anymore? Indiana University of Pennsylvania Safety Sciences professor Jan Wachter, Ph.D., in a letter on EHS Today states the following: While laws and regulations inform individuals what they cannot do, ethics instruct individuals and organizations as to what they should do. Our Government and corporations should promote a more ethical approach to managing their own profession. This strategy requires moral courage, conviction and professional unity, including a bottom-up approach through professional organizations, and understanding they need to look out for the public despite culture, pressure and misdirection from management and peers.

For the people that suffer from EMF sensitivity, these symptoms are real and we should not be told that we cannot make the best choice for our own health and safety, just because there are people that disagree. We should also not have to go through the harassment and threats from PP&L or any utility company just for protecting our property from what we believe to be unsafe.

This court can and should do the ethical thing when it comes to Pennsylvanian Citizens Health and well-being, Delaying these terminations and mandatory installs would be beneficial to all and give additional time for more suitable research to be completed and for the legislative process to move forward which is why the decision should be made in favor of the complainant, John Kline.

I thank the court for their time and consideration of this matter

John Kline