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July 25, 2018

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

Re: Alexia McKnight v. PECO Energy Company
Docket No. C-2017-2621057

Dear Secretary Chiavetta:

PECO's *Reply Brief* is attached for filing.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ward L. Smith".

Ward L. Smith
Counsel for PECO Energy Company

WS/adz
Enclosures

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Alexia McKnight

v.

PECO Energy Company

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:
:
:
:

Docket No. C-2017-2621057

CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that I served a copy of PECO Energy Company's *Reply Brief* in the above matter, upon all interested parties via email and overnight delivery to:

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Dated: July 25, 2018



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alexia and Lawrence McKnight	:	
	:	
v.	:	C-2017-2621057
	:	
PECO Energy Company	:	

Reply Brief of PECO Energy Company

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Introduction

On June 27, 2018, both parties filed Main Briefs. PECO's Main Brief comprehensively addresses the testimony in this proceeding. PECO thus primarily relies upon its Main Brief to establish its position with respect to the record evidence, and when discussing testimony in this Reply Brief it thus largely provides cross-references to its Main Brief rather than providing a new response. In this Reply Brief, PECO therefore responds only to a limited number of issues raised in the McKnight's Main Brief.

Summary of Argument

The McKnight's did not demonstrate that their *pro se* appearance resulted in an "inherently unfair" proceeding.

The various arguments presented by the McKnight's do not change the legal requirement that they are required to prove their case by a preponderance of the evidence.

In its Main Brief, PECO demonstrated that the McKnight's had not met their burden of proof. None of the arguments presented by the McKnight's alter that demonstration or the conclusions that should be drawn from the testimony.

PECO offered reasonable accommodations of meter relocation and alternative meter types; the McKnight's reasons for rejecting those options are not reasonable.

Argument

I. Reply to Introduction – the claim that the Commission’s litigation process is “inherently unfair”

In their Introduction (p. 4), the McKnight’s claim that the Commission’s litigation process is “inherently unfair” because they could not afford counsel, appeared *pro se*, and thus were unable to fully and comprehensively pursue their case.¹

It is noteworthy that, when the McKnight’s claim that they were not able to fully and comprehensively present their case, they do so in a 68-page, single-spaced brief.² The length and sophistication of that brief in and of itself demonstrates that the McKnight’s have the ability to comprehensively prosecute their claims. The McKnight’s brought in a witness (Mr. Bathgate) from Michigan; had a witness (Dr. Rea) testify by video from Texas; were given leave to (but chose not to) have a witness (Dr. Milham) testify by video from Washington state; and presented testimony from their treating physician, Dr. Prociuk. Mrs. McKnight testified about her experiences; Mr. McKnight, who is a medical doctor, testified at length about his observations of his wife and his views on the science. They introduced hundreds of pages of exhibits and late-filed exhibits. And, as noted, they filed a 68-page brief. This process was not “inherently unfair”; the McKnight’s had a full and fair opportunity to present their case.

Moreover, the Pennsylvania courts have held that, while it is appropriate for judges to give some additional latitude to *pro se* litigants – by, for example, allowing greater latitude in pleadings, or taking greater care to explain evidentiary rulings, or assisting the litigant to ask

¹ This theme also appears later in the McKnight’s Main Brief. *See, e.g.*, p. 15 (“As non-legal *pro se* representation we feel out of our league to argue how the legal system works or should set[] burdens of proof[].”)

² If the McKnight’s had followed the Commission’s regulations and double-spaced their brief, 52, Pa. Code §1.32(a)(1), it would have exceeded 100 pages.

questions of witnesses³ -- *pro se* status does not create any rights to have a procedure other than the normal rules of procedure and evidence:

A *pro se* litigant is granted the same rights, privileges and considerations as those accorded a party represented by counsel; however, *pro se* status does not entitle a party to any particular advantage because of his or her lack of legal training.

First Union Mortgage at 333.

These cases demonstrate that the McKnight's appearance *pro se* did not create an inherent unfairness that violated their due process rights.

II. Burden of Proof – The Complainants Have the Burden of Proof

PECO's Main Brief (p. 38) demonstrates that it is axiomatic in all Commission formal complaint proceedings that the Complainant has the burden of proving their claims by a preponderance of the evidence, citing *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

The McKnight's acknowledge (pp. 15, 22) that they have the burden of proof but nonetheless spend eight pages arguing they should not be required to meet that burden. PECO responds to those arguments sequentially as presented:

Fire extinguisher analogy

First, the McKnight's suggest (p. 15) that having to meet their burden of proving harm is a "bizarre and foreign concept" because, in a "culture of safety" all they should be required to prove is that an event "MIGHT" happen. Otherwise, they say, it is "like asking a person to prove that the fire occurred *before* allowing that person to purchase a fire extinguisher."

³ See, for example, *Commonwealth v Spuck*, 86 A. 3d 870 (Pa. Super. 2014); *Gephart v Gephart*, 764 A. 2d 613 (Pa. Super. 2000); *First Union Mortgage v. Frempong*, 744 A. 2d 327 (Pa. Super. 1999); *Triffin v Janssen*, 426 A. 2d 57 (Pa. Super. 1993); *Corra v Coll*, 451 A 2d 480 (Pa. Super. 1982).

At the core of this argument, the McKnight's are simply arguing that they should not have to meet their burden of proving harm, and their suggestion can be dismissed on that basis.

PECO also notes, however, that the McKnight's do not need to prove, analogically, that a "fire occurred" – they need to prove, analogically, that it is more likely than not that a fire will occur. And they must prove that by a preponderance of the evidence. That is the analog to the burden of proof they have in this proceeding; they claim that PECO's AMI meters will harm their health, and therefore they must prove, by a preponderance of the evidence, that it is more likely than not that PECO's AMI will harm their health. There is nothing "bizarre" or "foreign" about that requirement.

Woodbourne-Heaton

In *Randall/Albrecht v PECO*, C-2016-2537666 (and the related *Murphy* and *Povacz* cases), PECO argued in its Main Brief (p. 18) that the Commission's *Woodbourne-Heaton* decision (*Letter of Notification of Philadelphia Electric Company 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 Counties*, 1992 Pa. PUC Lexis 160) is controlling precedent on burden of proof in AMI/health cases, stating that:

Woodbourne-Heaton thus provides a dispositive framework for the burden and standard of proof in the instant proceeding: If the Complainants prove that there is a body of conflicting and inconclusive science, or that the science is "undecided," then the Complainants have failed to meet their burden of proof, and cannot prevail.

In their Main Brief (p. 16) the McKnight's restate this argument for PECO, and then state that they "consider this line of argumentation complete non-sense and completely inappropriate" because, they assert (pp. 19-21), it is impossible for there ever to be a "medical consensus"⁴ and

⁴ The McKnight's argument that it is impossible for a medical consensus to develop is based upon conclusory statements that have no support in the record. For example, on page 16, the McKnight's state, without citation or support, that "Also, there is no way to determine when, or

because there is confusion over “what a ‘diagnosis’ is,” and thus use of the *Woodbourne-Heaton* framework would mean that “it is essentially impossible for any complainant to ever win.”⁵

That is actually one of the points of PECO’s argument. If complainants sequentially can prove only that the science is “undecided,” then sequentially they should be unable to prevail. That is not “non-sense.” It is a result of applying the standard, proper, evidentiary requirement in complaint cases to determine whether the complainants proved their case.

Moreover, PECO notes that, in *Randall/Albrecht*, (pp. 11-13, 23) Your Honor reviewed the two conflicting views of burden of proof, including PECO’s *Woodbourne-Heaton* argument, and concluded that the Complainants in that case had the burden of proving, by a preponderance of evidence, their claim that PECO’s AMI meter would harm them. This also strongly suggests that PECO’s position (that the Commission should apply *Woodbourne-Heaton* to determine the burden of proof) is not “non-sense.”

even if consensus has been reached or the science is ‘decided.’” That assertion was not based upon testimony given by any witness and the McKnight’s provide no record citation to support it.

⁵ The McKnight’s also claim (p. 16) that “in a short legal hearing there is inadequate time” to determine whether a medical consensus and that “it is not the job of the legal system” to resolve conflicts of medical testimony and determine whether a medical consensus exists. *See also*, McKnight Main Brief, p. 39, where the same argument is made. PECO notes that the Commission has made similar determinations for decades with respect to electric and/or magnetic fields and transmission lines – as in *Woodbourne-Heaton*. It should also be noted that, a few pages later in their Main Brief, the McKnight’s quote the United States Supreme Court in the *Richardson* case (discussed later in text): “We therefore are presented with the not uncommon situation of conflicting medical evidence. The trier of fact has the duty to resolve that conflict.” *Richardson* was an administrative law case. The United States Supreme Court has thus explicitly recognized that resolving conflicts in medical testimony is precisely “the job of the legal system,” and specifically is the job of administrative law judges.

The role of the clinical physician in the absence of consensus

The McKnight's then argue (pp. 18-19) that clinical physicians often must act even in the absence of a medical consensus and that this somehow demonstrates that their burden of proof in this case should be lowered.

In its Main Brief (pp. 45), PECO analyzed this argument as specifically applied to the testimony of Dr. Prociuk:

With all due respect to the important and difficult role played by clinicians, a clinical opinion that is admittedly based on science in its clinical infancy and science that has not established a connection between exposure to radiofrequency fields and EHS does not meaningfully contribute to a determination of whether PECO's AMI meters cause, contribute to, or exacerbate Mrs. McKnight's ill health – and certainly does not constitute a preponderance of evidence supporting that conclusion. Such an opinion proves only that, in a clinical setting, Dr. Prociuk is willing to act *as though such proof exists* – even though he frankly and candidly admitted that such proof does not exist.

In the hearing room, however, the question is not what Dr. Prociuk would do in the clinic when faced with an “incomplete picture.” The question is whether the picture has been scientifically completed sufficiently to prove causation. Dr. Prociuk admitted that such scientific proof does not exist, and his testimony therefore does not support a finding that PECO's AMI meters cause, contribute to, or exacerbate adverse health.

In sum, the fact that clinical physicians must make difficult treatment calls in the absence of a medical consensus does not alter the burden of proof in this legal proceeding.

Milkie

Next (p. 20), the McKnight's state that they are allowed to establish a *prima facie* case using circumstantial evidence, citing *Milkie v PaPUC*, 768 A. 2d 1217 (Pa. Cmwlth. 2001). That is correct, but it does not change the McKnight's burden of proof. The requirement to present a *prima facie* (“first face”) case entails meeting a quite low evidentiary bar, and all that happens when the complainant clears that bar is that the utility is then required to produce *its* evidence. But throughout that process, the complainant continues to have the burdens of proof and persuasion. This interplay is explained in the paragraph of *Milkie* that immediately follows

its statements regarding use of circumstantial evidence to prove a *prima facie* case (emphasis added):

Any circumstantial evidence which meets this standard will establish a *prima facie* case.

Once it is determined that the complainant has made out his *prima facie* case, the burden of going forward shifts to the utility, but *the ultimate burden of persuasion remains with the complainant*. The Commission must measure the weight and credibility of all the evidence, and *simply because the ratepayer has presented a prima facie case does not obligate the Commission to credit this evidence or to give it any special weight. If the utility presents evidence found to be of co-equal (or greater) weight with that of the complainant, the complainant will not have met his burden of proof.*

Milkie at 1220.

Lansberry

Next (p. 20), the McKnight's discuss *Lansberry* and state: "The distinction between a burden to show a 'Preponderance of the evidence' could be interpreted as a higher legal standard than 'substantial evidence,'" and this case is argued in *Lansberry*. *Lansberry* was a relatively different situation than this case, however, not involving safety, nor involving conflicting medical or scientific opinions."

First, *Lansberry* did not merely "argue" the question of whether PaPUC complainants are required to prove their case by "substantial evidence" on the one hand or "a preponderance of evidence" on the other hand – it is the seminal case that decided that issue by determining that the standard is "preponderance of the evidence" (*Lansberry* at 221-22, citations omitted, emphasis added):

It is clear, on the other hand, that the degree of proof required to establish a case before an administrative tribunal is the same degree of proof used in most civil proceedings, i.e., a preponderance of the evidence. *It is well established in this Commonwealth that proof by a preponderance of the evidence is the lowest degree of proof recognized in civil judicial proceedings. * * ** The 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. Thus, *Lansberry's* argument is without merit.

Second, the Commission has made it quite clear that *Lansberry* is applicable to AMI/health cases. See *Susan Kreider v PECO*, P-2015-2495064 (Opinion and Order, January 28, 2016) at 22; *Mary Paul v PECO*, C-2015-2475355 (Opinion and Order, June 14, 2018) at 11-13; *Catherine Frompovich v PECO*, C-2015-2474602 (Opinion and Order, May 3, 2018) at 12-14 (all of these Opinions cite *Lansberry* in the sections in which the Commission determined that the Complainants had the burden of proof).

Richardson

The McKnight's next (pp. 20-22) turn to the United States Supreme Court case of *Richardson v Perales*, 402 U.S. 389 (1971). *Richardson* discusses the meaning of "substantial evidence," and the McKnight's argue that *Richardson* is applicable to this proceeding because it "discussed specifically the use of physician medical examinations . . . and this case discusses the issue of medical controversy." They appear to argue that they should thus only be required to meet a "substantial evidence" standard.

Richardson is a Social Security disability case. By federal statute, 42 U.S.C. §405(g), factual determinations made in such hearings are dispositive as long as they are based on "substantial evidence."⁶ This legal standard, set separately by Congress for use in Social Security disability hearings, does not alter the burden of proof by a preponderance of evidence in proceedings before the Commission, as set forth in *Lansberry*.

III. The Complainants' testimony did not demonstrate that PECO's AMI meter caused or will cause Mrs. McKnight to be ill

A. Mrs. McKnight's Testimony and Mr. McKnight's Testimony

At pages 22-26 of their Main Brief, the McKnight's discuss their respective testimony. For the testimony of both Complainants, the McKnight's focus is on temporality – that is, their

⁶ See *Richardson* at 390, fn1: The Social Security Act states: "The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive."

statements that Mrs. McKnight became ill while the AMI meter was installed and better when it was removed. They claim this demonstrates that the AMI meter caused her to suffer illness.

PECO presented its arguments with respect to the testimony of these two witnesses, and specifically as to their temporality claims, at pages 38-43 of its Main Brief. Based on the arguments contained in its Main Brief, PECO concluded (p. 41) that “Taken all together, then, Mrs. McKnight’s testimony does not support a conclusion that her symptoms were caused, contributed to, or exacerbated by PECO’s AMI meter,” and (p. 43) that “Mr. McKnight’s observations of his wife thus do not rise to the level of proving, by a preponderance of the evidence, that PECO’s AMI meters cause, contribute to, or exacerbate Mrs. McKnight’s symptoms. PECO did not identify any arguments in the discussion of this testimony in the McKnight’s Main Brief that require additional response.

B. Dr. Prociuk’s Testimony

The McKnight’s discuss the testimony of Dr. Prociuk at page 27 of their Main Brief.

PECO presented its analysis of Dr. Prociuk’s testimony at pages 44-45 of its Main Brief, and concluded that:

In the hearing room, however, the question is not what Dr. Prociuk would do in the clinic when faced with an “incomplete picture.” The question is whether the picture has been scientifically completed sufficiently to prove causation. Dr. Prociuk admitted that such scientific proof does not exist, and his testimony therefore does not support a finding that PECO’s AMI meters cause, contribute to, or exacerbate adverse health.

PECO did not identify any arguments in the discussion of Dr. Prociuk’s testimony in the McKnight’s Main Brief that require additional response.

C. Mr. Bathgate’s Testimony

The McKnight’s discuss the testimony of Mr. Bathgate at pages 50-60 of their Main Brief.

PECO presented its analysis of Mr. Bathgate's testimony at pages 45-50 of its Main Brief. Its introduction and conclusion to that section are:

The most critical aspect of Mr. Bathgate's testimony is that it had nothing to do with health or safety of PECO's AMI meters. He stated that the standards about which he testified, and the concerns that he raised about PECO's AMI meters, are related to whether operation of the AMI meters will interfere with the operation of other radio services. Apr 11 Tr. 328-331. Indeed, he was not recognized as an expert in any health field and was not allowed to express opinions on issues of health. Apr 11 Tr. 352-53. Thus, even if Mr. Bathgate's testimony were to be accepted on its face, it would provide no evidence in support of the McKnight's' health claims.

* * *

In sum, Mr. Bathgate's testimony does not provide a preponderance of evidence, or indeed any evidence, that PECO's AMI meters will cause, contribute to, or exacerbate Mrs. McKnight's symptoms. His testimony was concerned with possible interference with other sources of radio operations, and did not address safety or health.

PECO did not identify any arguments in the discussion of Mr. Bathgate's testimony in the McKnight's Main Brief that require additional response.

D. Dr. Rea's Testimony

At the hearing, PECO demonstrated that Dr. Rea is under sanction by the Texas Medical Board. On May 14, 2018, the McKnight's filed a late-filed exhibit comprised of 218 pages of unsworn narratives and attached documents that attempts to rehabilitate Dr. Rea's credibility. They also discuss his testimony at page 28 of their Main Brief.

PECO presented its analysis of Dr. Rea's testimony, and of the late-filed exhibit, at pages 51-55 of its Main Brief, and concluded that "even with the McKnight's lengthy attempt to attack the Texas Medical Board, there are still ample reasons to conclude that Dr. Rea's opinions should be given no weight."

There is nothing in the McKnight's Main Brief that requires further response.

IV. PECO provided substantial, persuasive testimony that its AMI meters did not cause, and will not cause, Mrs. McKnight to be ill

A. Mr. Pritchard's Testimony

The McKnight's discuss the testimony of Mr. Pritchard at pages 54-58 of their Main Brief.

PECO presented its analysis of Mr. Pritchard's testimony at pages 45-50 and 55-59 of its Main Brief.

PECO did not identify any arguments in the discussion of this testimony in the McKnight's Main Brief that require additional response. However, in the discussion of policy issues (below) PECO will briefly return to Mr. Pritchard's testimony on accommodations.

B. Dr. Davis's Testimony

The McKnight's discuss the testimony of Dr. Davis at pages 36-50 and pages 58-60 of their Main Brief.

PECO presented its analysis of Dr. Davis's testimony at pages 59-60 of its Main Brief. PECO described Dr. Davis's qualifications; his testimony regarding the standards of the Federal Communications Commission ("FCC"), including that PECO's AMI meters meet those standards whether measured on an average or peak basis; that people are routinely exposed to much larger RF fields from other sources; that PECO's AMI meters will reduce the radiofrequency exposure from PECO's existing AMR meters by 79%; and that PECO's AMI meters have radiofrequency transmission levels that are incredibly low compared to the many other sources of radiofrequency fields in the environment that have existed for decades and the AMI exposures pale in significance compared to other sources.

PECO also stated that, in Dr. Davis's opinion, there is no reliable scientific basis to conclude that radiofrequency fields from PECO's AMI meters are capable of producing any adverse biological effects.

PECO would like to briefly address several issues raised in the McKnight's Main Brief.

First, on page 36 of their Main Brief, the McKnight's argue that Dr. Davis's testimony should not be believed because "Mr. Watson, Dr. Davis' legal representation is questionable because he does not have a license in the state of Pennsylvania and his lawyers apparently did not file Pro-Hac-Vice properly."⁷

PECO corrected this oversight on July 16, 2018 by filing for *pro hac vice* admission for Mr. Watson in this proceeding. More importantly, however, Mr. Watson is not "Dr. Davis' legal representation." Mr. Watson represents PECO. Dr. Davis is a witness for PECO. If Mr. Watson had not been available for hearing – if, for example, he had been ill – Dr. Davis still would have appeared and been asked the same questions on direct, probably by Mr. Smith. Mr. Watson's *pro hac* status does not affect the testimony of Dr. Davis (or Dr. Israel).

Second, a great deal of this section of the McKnight's Main Brief relies upon information that was not introduced into the record and about which no witness was ever asked any question. Perhaps most markedly, beginning at page 41 the discussion is based upon articles from Wikipedia, a site called "Science Direct," the "Whole Design Building Guide," and a study from the National Toxicological Protocol that the McKnight's identified, by name, as something that they were not introducing into the record because it had no relevance to their claim. *See* Apr. 13 Tr. at 38-39.

⁷ The McKnight's made a similar argument with respect to Dr. Israel at page 28.

This pattern is repeated later in the McKnight's Main Brief at 60, where the McKnight's for the first time discuss Austrian standards, without any supporting testimony and without the opportunity for any witness to opine about those standards.

The McKnight's also refer (pp. 44, 46) to FCC documents that were not presented in evidence and argue that they are "public records" or "ancient documents" that should be admissible as exceptions to the hearsay rule. PECO hasn't seen these documents and therefore has no opinion about whether they would have been admissible if offered at hearing, but that isn't really the point – the point is that they were not offered at hearing. There was no opportunity to discuss those documents or to ask Dr. Davis his opinion of these documents because the McKnight's are introducing them for the first time in their Main Brief – which is not allowed.

The McKnight's also attempt (p. 49) to call into question Dr. Davis's calculations that compare cell phone usage to exposure to AMI meters. However, when Mrs. McKnight suggested during cross-examination of Dr. Davis that there was an inconsistency in his testimony in this case and prior cases, Dr. Davis replied: "I think you're mischaracterizing testimony that I provided on an earlier occasion." Ms. McKnight then insisted that there was an inconsistency, but was unable to locate the prior statement that she claimed proved the inconsistency. The ALJ thus sustained a motion to strike her characterization of inconsistency, and Dr. Davis was never given any opportunity to discuss how the various pieces of testimony relate to one another. Apr 13 Tr. at 156-58.

Pennsylvania Rule of Evidence 613(b) provides a clear procedure that must be used when a litigant wishes to impeach a witness through use of prior inconsistent statements: such claimed prior inconsistent statements may be used to impeach a witness only if the claimed prior

inconsistent statement is shown to the witness, the witness is given an opportunity to explain or deny the claimed inconsistency, and the party who is sponsoring the witness is given the opportunity to ask rehabilitative questions. None of that happened here. The McKnight's did not meet the requirements of Rule of Evidence 613(b), and their assertion of inconsistency was thus disallowed at hearing. That assertion cannot now be used to try to prove an inconsistency.

PECO does not wish to engage in debate of extra-record materials, but since the McKnight's made this argument using extra-record materials, it will reply with this proffer: There are several inputs to the cell phone/AMI calculation that affect the comparison. One such input is the brand of the Complainant's cell phone (different cell phones produce different radiofrequency levels); another input is whether the person holds the cell phone to their ear, uses earphones, or uses the phone on speaker at arm's length or greater distance. The same minutes' usage combined with a different cell phone brand and different usage style results in a different comparison.

Similarly, the McKnight's rely (p. 40) on a 1987 study by Dr. Davis that, they claim, contradicts his testimony in this case. Rule 613(b) also applies to this putative attempt to prove an inconsistency, and a similar conclusion must be reached – the attempt is not allowable because it was not done at hearing, when Dr. Davis could have given testimony with respect to his prior study.

With respect to the actual record evidence, however, PECO relies upon the discussion of Dr. Davis's testimony as set forth in its Main Brief.

C. Dr. Israel's Testimony

The McKnight's discuss the testimony of Dr. Israel at pages 28-34 of their Main Brief.

PECO presented its analysis of Dr. Israel’s testimony at pages 60-61 of its Main Brief. PECO described Dr. Israel’s qualifications; described the review of the scientific research literature that he conducted; described his review of Mrs. McKnight’s medical records (including his conclusion that there are “no medical records that Mrs. McKnight actually has the Cardiovascular Symptom she claims.” PECO also stated that, in Dr. Israel’s expert opinion, there is no reliable medical basis to conclude that radiofrequency fields from PECO’s AMI meters did or will cause, contribute to, or exacerbate IEI, electromagnetic hypersensitivity (“EHS”), or any symptoms or conditions reported by Mrs. McKnight.

PECO would like to briefly address two issues raised in the McKnight’s Main Brief.

First, the McKnight’s claim (p. 34) that when Dr. Israel testified that there are no medical records that Mrs. McKnight actually has the Cardiovascular Symptom she claims to have, he “ignores any temporal aspects of events.” Their basic argument is that they are sure that Mrs. McKnight had the Cardiovascular Symptom, but it had gone away by the time she was tested by doctors.

PECO reiterates the testimony of Dr. Israel, which was fully supported by the medical records (and the testimony of Dr. Rea) – whenever a doctor tested Mrs. McKnight for the Cardiovascular Symptom, their records indicate that they did not find evidence that she had that Symptom. There is no way to turn that absence of medical records into evidence that she *does* have the Cardiovascular Symptom.

Second, the McKnight’s argue (pp. 31-33) that Dr. Israel’s literature review is “questionable, at best.” This argument is based on Mr. McKnight’s testimony that all existing research on EHS suffers from “Type II” or “false negative” errors. In a nutshell, the McKnight’s argue that Mr. McKnight’s analysis of Type II errors is correct, and that since Dr. Israel did not

agree with that analysis, his review must be deemed “questionable.” PECO notes simply that, in its Main Brief (p. 42), it demonstrated that more than 50 studies have looked for, but failed to find, proof to support the view that exposure to radiofrequency fields causes, contributes to or exacerbates EHS; that Dr. Israel reviewed those studies and concluded they do not suffer from Type II error; that the World Health Organization has reviewed those same studies and concluded that they do not support the view that EHS is caused by exposure to radio frequency fields; and that therefore Mr. McKnight is an “outlier” with respect to his Type II analysis. In other words, it is Mr. McKnight’s review that should be seen as “questionable.”

Other than that, PECO relies upon the discussion of Dr. Israel’s testimony as set forth in its Main Brief.

V. Policy/Accommodation Issues

In the final section of their Main Brief (pp. 58-67), the McKnight’s argue that PECO is required by law to provide them with an accommodation – by which they mean solely and exclusively use of a non-transmitting meter – and that no other accommodation offered by PECO is satisfactory to them (and thus they conclude that PECO’s accommodations are not reasonable).

One purpose of these hearings is to determine whether accommodations are available to the McKnight’s. It is worth revisiting the language from the seminal *Kreider Order* that began this line of inquiry (p. 23, fn. omitted):

PECO essentially argues that the Commission cannot grant the Complainant any conceivable remedy, and therefore, the Complainant should not receive a hearing. In our view, this analysis puts the cart before the horse. *It only becomes necessary to reach a determination regarding the remedies available to the Complainant in this case if the ALJ finds, after a full evidentiary hearing, that the facts establish a violation of the Code, a Commission Order, or Regulation.*⁸ Given the state of the record at this point in the

⁸ PECO notes that the McKnight’s have not “establish[ed] a violation of the Code, a Commission Order, or Regulation,” and that the *Kreider* requirement to look at accommodations therefore is

proceeding, we believe it is premature to conclude that the facts and the law absolutely preclude any possible remedy. *It may be possible, for example, for the Respondent to install the smart meter in a different location other than outside of the Complainant's bedroom or to use a different type of smart meter at this Complainant's home.* In any event, it is for the ALJ to determine what remedy to recommend, in the event that she finds a violation after a full evidentiary hearing.

As discussed in PECO's Main Brief (pp. 45-50), Mr. Pritchard testified that PECO will work with the customer on the two accommodation approaches recommended by the Commission – that is, it will work with the customer to relocate their meter board and connect PECO service to the newly located meter board, and it has offered three new types of AMI meters with different characteristics. (PECO also offered additional accommodations, which were discussed in Mr. Pritchard's testimony and its Main Brief, but for purposes of this Reply Brief PECO will focus on the two accommodation types that the Commission itself raised in the *Kreider Order*.)

In their Main Brief (pp. 61-62), the McKnight's reject the idea of meter relocation – and their reasons for rejecting this accommodation are quite revealing.

First, the McKnight's believe that relocating the meter would require digging up their driveway, and they do not want to spend any money doing so. This is not a health-based rationale for rejecting the relocation alternative.

Second, the McKnight's assert that relocating the meter would “deny [Mrs. McKnight] access to a large area of her property, and render aesthetic degradations to the front yard.”⁹

not truly applicable, given the record in this proceeding. Nonetheless, PECO remains committed to the accommodations that it offered at hearing.

⁹ The McKnight's reference *Mattu v West Penn Power Company*, C-2016-2547322, in support of this argument. The Commission rejected a similar argument based on *Mattu* in *Mary Paul v PECO*, C-2015-2475355 (Opinion and Order, June 14, 2018), pp. 26-27.

Again, this is not a health-based rationale for rejecting the relocation alternative; the McKnight's are concerned with how their yard looks and that they will not be able to use a portion of it.¹⁰

Third, the McKnight's are concerned that, even if the AMI meter is moved a sufficient distance to reduce radiofrequency fields from its scheduled transmissions, Mrs. McKnight could still have radiofrequency exposure from the "other" mechanisms identified by Mr. Bathgate (conducted emissions and secondary antenna effect). PECO recognizes that the McKnight's are presenting this as a health-based objection, but it must be recalled that Mr. Bathgate's testimony had nothing to do with health or safety of PECO's AMI meters. He stated that the standards about which he testified, and the concerns that he raised about PECO's AMI meters, are related to whether operation of the AMI meters will interfere with the operation of other radio services. Apr 11 Tr. 328-331. Indeed, he was not recognized as an expert in any health field and was not allowed to express opinions on issues of health. Apr 11 Tr. 352-53. Thus, the mechanisms that he described, even if accepted as occurring, would provide no evidence in support of the claim that Mrs. McKnight's health would be adversely affected by them. And the McKnight's rejection of a meter relocation accommodation based on Mr. Bathgate's testimony is thus not truly a health-based rejection.

Similarly, PECO is now offering multiple meter types that, even the McKnight's admit, will reduce the number of radiofrequency transmissions and which in one case does not have the switch mode power supply that concerns the McKnight's. Again, the McKnight's reject this option because they are concerned about Mr. Bathgate's "other" mechanisms.

In evaluating the reasonableness of positions with respect to accommodation, PECO respectfully submits that, on the record in this proceeding, it is clearly being reasonable by

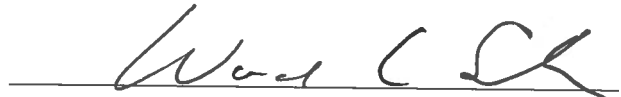
¹⁰ The McKnight property is 1.9 acres, Apr 10 Tr. 35, and Mrs. McKnight testified that she was able to sleep in a boat 110 feet away from the installed AMI meter. Apr 12 Tr. 194-95.

offering meter relocation and new meter types. The McKnight's reject these options due to money, aesthetics, and "mechanism" theories that even their own witness does not claim to be health-related. The McKnight's rejection of the offered accommodations is not reasonable.

Conclusion

PECO respectfully submits that the McKnight's did not prove, by a preponderance of the evidence, that PECO's AMI meters will cause, contribute to, or exacerbate Mrs. McKnight's illness. To the contrary, PECO provided substantial, persuasive evidence that its AMI meters did not and will not cause, contribute to, or exacerbate Mrs. McKnight's illness. Therefore, the McKnight's Complaint should be dismissed.

Respectfully submitted,



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