POST & SCHELL PC
ATTORNEYS AT LAW

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

Devin Ryan

dryan@postschell.com
717-612-6052 Direct
717-731-1981 Direct Fax
File #: 167945

September 17, 2018

VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta:

Enclosed for filing are the Replies of PPL Electric Utilities Corporation to the Exceptions of John Kline in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Devin Ryan

DTR/jl
Enclosures

cc: Honorable Elizabeth Barnes
Certificate of Service
Office of Special Assistants (*via e-mail*)

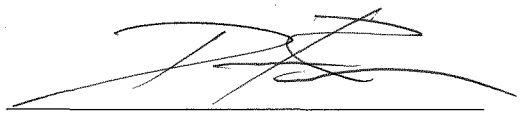
CERTIFICATE OF SERVICE

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

VIA E-MAIL & FIRST CLASS MAIL

John Kline
5611 Stradford Drive
Harrisburg, PA 17112
Jack.Kline@ecolab.com

Date: September 17, 2018



Devin T. Ryan

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE EXCEPTIONS OF JOHN KLINE

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

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

Curtis S. Renner (DC ID # 446187)
Watson & Renner
1901 Pennsylvania Avenue, NW
Suite 1005 - ENS
Washington, DC 20006
Phone: 202-737 6302
E-mail: crenner@w-r.com

Date: September 17, 2018

Attorneys for PPL Electric Utilities Corporation

TABLE OF CONTENTS

Table of Contents

I. INTRODUCTION

PPL Electric Utilities Corporation ("PPL Electric" or the "Company"), pursuant to 52 Pa. Code § 5.535, hereby respectfully submits these Replies to the Exceptions of John Kline ("Complainant"). In the Initial Decision ("ID"), Administrative Law Judge Elizabeth H. Barnes (the "ALJ") dismissed the Complainant's Formal Complaint challenging the Company's installation of a new advanced metering infrastructure ("AMI") meter at his premises. The ALJ correctly held that the Complainant failed to prove by a preponderance of evidence that the installation of the AMI meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501.

On September 5, 2018, the Complainant filed Exceptions to the ID, and PPL Electric filed a limited Exception to the ID regarding the fire safety recommendations made by the ID.

As explained herein, the Complainant's Exceptions are without merit and should be denied. Accordingly, the Company respectfully requests that the Pennsylvania Public Utility Commission ("Commission") deny the Complainant's Exceptions and adopt the ID as modified consistent with PPL Electric's limited Exception.

II. REPLIES TO EXCEPTIONS

A. REPLIES TO EXCEPTIONS NOS. 1, 2, 3, 7, AND 9 – THE ALJ PROPERLY FOUND THAT THE COMPLAINANT FAILED TO SUSTAIN HIS BURDEN OF PROOF THAT INSTALLING THE NEW AMI METER WOULD VIOLATE SECTION 1501 OF THE PUBLIC UTILITY CODE

The Complainant disputes the ALJ's finding that he has failed to meet his burden of proof that installing the new AMI meter would violate Section 1501 of the Public Utility Code. (Exceptions at 9-18, 29-33, 35-38) According to the Complainant, the ALJ erred in finding that there is no reliable basis to conclude that radiofrequency ("RF") field exposure can cause adverse health effects. (Exceptions at 29-33) The Complainant believes that he presented many more

studies and documents than PPL Electric. (Exceptions at 29-33, 36-38) Moreover, the Complainant alleges that the Company's expert witnesses are biased and provided inaccurate testimony, so the ALJ should have disregarded their testimony and exhibits. (Exceptions 9-16) The Complainant even attempts to introduce testimony given by Dr. Davis and Dr. Israel in Commission proceedings involving PECO Energy Company ("PECO"), even though such testimony in not in the record in this case. (Exceptions at 16-17) Lastly, the Complainant challenges the ALJ's reliance on the testimony of Dr. Davis and Mr. Larson in concluding that the new AMI meter does not present a fire risk. (Exceptions at 17-18) As explained herein, the Complainant's Exceptions are without merit and should be denied.

1. There Is No Reliable Medical or Scientific Basis to Conclude that the New AMI Meter Will Cause or Contribute to Any Adverse Health Effects

The Company has offered thorough, credible, and reliable expert testimony and exhibits demonstrating the new AMI meter will not cause or contribute to any adverse health effects. (PPL MB at 13-24)

First, Dr. Davis testified that the Federal Communications Commission ("FCC") has determined safe public exposure levels for RF fields from devices that transmit RF signals, such as the AMI meters. (PPL MB at 16) The FCC safe public exposure limits are based on evaluations of the body of scientific research on RF fields and were adopted in consultation with other federal agencies, including the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA). (PPL MB at 16) The FCC continues to coordinate with the agencies and to consider whether new scientific research shows any adverse effects from RF fields. (PPL MB at 16)

Based on the engineering specifications for the Landis & Gyr AMI meter being deployed by the Company, Dr. Davis calculated that the levels of RF fields from the AMI meters are

98,000 times lower than the RF exposure safety limits established by the FCC. (PPL MB at 16) As a result, Dr. Davis found that "the RF field levels from the AMI meters being used by PPL Electric more than comply with the applicable FCC RF exposure limit." (PPL MB at 16) Moreover, the RF signals from the AMI meter are of very short duration and will occur for only a total of 84 seconds over a 24-hour period. (PPL MB at 16)

Dr. Davis also testified that there are many sources of RF signals in the everyday environment and the RF fields from the AMI meter are much lower than from other typical sources. (PPL MB at 17) For example, RF fields from using cell phones can be over 260,000 times higher than the RF fields from the AMI meter, and RF exposures from microwave ovens can be over 820,000 times higher. (PPL MB at 17) Even 30 feet away from a person using a cell phone, the RF fields are 3 times higher than from the AMI meter. (PPL MB at 17) Notably, the record demonstrates that the Complainant used his cell phone for 8,580 minutes over a 5-month period. (PPL MB at 17) The RF field exposure from this amount of cell phone usage is equivalent to 1,692 years of continuous RF exposure at a distance of approximately 1 meter from the AMI meter. (PPL MB at 17) Dr. Davis is the only witness in this case to present expert testimony about RF dosimetry (measurements and calculations). His calculations and expert testimony were unrebutted by any other testimony, and there is no reliable scientific basis for saying they are inaccurate. In his Exceptions, the Complainant – who is not an expert and does not have a college degree in any field, much less one related to physics or bioelectromagnetics – claims that Dr. Davis's calculations of RF exposures must be mistaken. At the hearing, the Complainant never examined Dr. Davis about the basis or methods for his calculations. The Complainant now suggests that his own convoluted, non-expert calculations should be

substituted for those of Dr. Davis. However, these new calculations were not presented at the hearing and are lay-person misinterpretations of scientific issues.

Furthermore, the existing background levels of RF fields at Complainant's residence are many times higher than the fields from the AMI meter. (PPL MB at 17) Dr. Davis testified that there are seven television broadcast towers with a 50 mile radius of Complainant's location. (PPL MB at 17) Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainant's residence are **20 times higher** than the RF signals from the AMI meter. (PPL MB at 17) The Complainant never rebutted this expert testimony about the RF field levels in this case. Thus, considering the AMI meter's RF fields are substantially lower than the FCC standard and many everyday sources, there is no reliable scientific basis to conclude very low levels of RF fields from the AMI meters being deployed by the Company can or will cause any adverse thermal or non-thermal biological effects in people. (PPL MB at 18) Notably, Dr. Davis's expert testimony on these points was not contradicted by any other expert testimony.

Second, Dr. Israel – the only medical expert to present testimony in this case – evaluated the scientific research on RF fields and adverse health effects. (PPL MB at 20) He testified that he has been systematically examining this research over the past several decades and that many hundreds of studies have been published. (PPL MB at 20) Dr. Israel stated that three groups of controlled laboratory studies on animals "are particularly informative because they address fundamental biological functions that are very sensitive to any disruption: genetics, reproduction, and growth and development." (PPL MB at 20-21) Dr. Israel also described a number of the studies in these areas which he considered good examples of well-designed and well-conducted studies, which found no adverse effects on genetics, fertility, reproduction, growth or

development in the animals exposed to RF fields. (PPL MB at 21) Further, Dr. Israel provided examples of well-conducted animal studies on RF fields and cancer. (PPL MB at 21) These studies also did not find any increased incidence in cancer in the RF exposed animals compared to non-exposed animals. (PPL MB at 21)

Based on the body of scientific research showing no consistent and reproducible effects from RF fields on cancer and other adverse health effects, the WHO has concluded that "no adverse health effects have been established as being caused by mobile phone use." (PPL MB at 22) Many other public health authorities, including agencies in the Canada, the U.K., Sweden, Norway, the Netherlands, and New Zealand, among others, have recently reached similar conclusions. (PPL MB at 22) Further, several U.S. state public health authorities and public utility commissions have investigated claims about health effects from smart meters, all of which have found that RF fields from smart meters do not pose any public health risk. (PPL MB at 22-23)

In addition, Dr. Israel reviewed the published scientific research on electromagnetic hypersensitivity ("EHS") from the perspective of a medical doctor. (PPL MB at 21) He was the only medical doctor to provide expert testimony in this case. Dr. Israel testified that claimed symptoms related to EHS are more accurately described as "Idiopathic Environmental Intolerance" ("IEI"), in which "idiopathic" means "cause unknown," rather than electromagnetic hypersensitivity. (PPL MB at 21) This is consistent with a recommendation from the WHO. (PPL St. No. 2, p. 11) Dr. Israel evaluated the scientific research on IEI and found that "[r]eliable studies dating back to at least 2002 and also recent reviews of the studies by experts and reviews by expert panels of public health authorities have found IEI and the variety of symptoms attributed to it are not caused by exposure to RF fields." (PPL MB at 21) For

example, a systematic review of 46 studies involving 1,175 individuals who claimed IEI symptoms found that people claiming IEI symptoms from RF fields could not replicate the claimed effect under controlled laboratory conditions. (PPL MB at 21) Another recent study found that people who claimed IEI symptoms from RF fields reported lower levels of well-being when they knew they were exposed to RF fields, but when they did not know if they were being exposed, their reports of symptoms were not associated with RF fields. (PPL MB at 21) That study concluded that "it is IEI-EMF individuals' belief that exposure to RF EMFs will cause harm, rather than actual exposure itself, that results in the presence of symptoms in IEI-EMF individuals." (PPL MB at 21-22) Moreover, the research on IEI has been evaluated by credible public health entities and expert groups, including the United Kingdom Health Protection Agency (2012), the Royal Society of Canada (2013), the New Zealand Ministry of Health (2015), and the European Commission's Scientific Committee on Emerging and Newly Identified Health Risks (2015). (PPL MB at 22) Based on their reviews of the scientific research, these entities concluded there is no reliable scientific evidence that exposure to RF fields causes claimed IEI symptoms. (PPL MB at 22)

Dr. Israel also examined the scientific research relevant to the long list of medical conditions and illnesses that the Complainant claims are caused by exposure to RF fields. (PPL MB at 23) Dr. Israel testified that this list of claimed conditions was not an accurate statement of the science and that there was no reliable scientific basis to conclude that RF fields caused any of these conditions or symptoms. (PPL MB at 23) Further, the Complainant's many exhibits downloaded from the internet, including activist documents such as the International Scientist Appeal and other materials, were not scientific studies and did not provide a reliable scientific basis to conclude that RF fields from AMI meters would cause or contribute to adverse health

effects. (PPL MB at 23) Based on his evaluations and his expertise, Dr. Israel concluded that that there is no reliable medical basis to conclude that the new AMI meter will cause or contribute to the development of illness or disease, or would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainant, or any other adverse health effects. (PPL MB at 23-24) Importantly, Dr. Israel's expert testimony on these points was not contradicted by any other expert testimony.

Thus, the Company has presented overwhelming evidence through its scientific and medical expert witnesses, Dr. Christopher Davis and Dr. Mark Israel, to support the ALJ's finding that there is no reliable basis to conclude that the new AMI meter will cause or contribute to any adverse health effects. (ID at 14-16)

Despite all of this thorough, credible, and reliable evidence rebutting the Complainant's allegations, the Complainant avers that he met his burden of proof. The Complainant mistakenly believes that the scientific and medical issues in this case hinge on which party claims to have the highest tally of studies it believes support its positions. (Exceptions at 29-33, 36-38) From the Complainant's perspective, he believes he should prevail because he has "presented thousands of examples of studies" as well as "over 200 studies" in his Exhibit Q. (Exceptions at 30, 32) However, what actually matters is the credibility of the expert evaluations of the body of scientific research. As explained above, the Company's expert witnesses presented thorough, credible, and reliable evidence demonstrating that the new AMI meter will not cause or contribute to any adverse health effects.

Notwithstanding, even if the number of studies mattered, which is does not, the Complainant sources his studies from unreliable documents. Indeed, many of Mr. Kline's "references" come from a bibliography prepared in 1971 for the Navy. (Complainant's Exhibit

R) Dr. Israel reviewed this document and testified that it is not a scientific study published in a scientific journal. (PPL RB at 10) Rather, it is a bibliographic listing that does not include any substantive information. (PPL RB at 10) Of particular relevance is a disclaimer in the document that warns, "these effects are listed without comment or endorsement since the literature abound with conflicting reports." (PPL RB at 10) The author of the bibliography emphasizes that "in some cases the basis for reporting an effect was a single or a non-statistical observation which may have been drawn from a poorly conceived and poorly executed experiment." (PPL RB at 10) Therefore, Dr. Israel found that Complainant's Exhibit R does not provide a reliable scientific basis to conclude that RF fields would cause, contribute to or exacerbate any health effect. (PPL RB at 10)

Dr. Israel also evaluated Complainant's Exhibit Q, which is a printed list of studies and abstracts from an online database. (PPL RB at 11) He testified that as a medical expert, he would not confine his evaluation of research to looking at abstracts because they often do not provide sufficient information to actually understand what the study did and whether the conclusions that are drawn are actually supported by the data. (PPL RB at 11) For a scientist, it is not possible to reliably evaluate a group of scientific studies based on information provided in abstracts. (PPL RB at 11) As a result, Complainant's Exhibit Q does not provide a reliable scientific basis to reach conclusions about RF fields and health. (PPL RB at 11)

In sum, after reviewing and weighing all of the evidence, the ALJ correctly found that there is no reliable basis to conclude that the new AMI meters will cause or contribute to any adverse health effects.

2. The ALJ Properly Relied on the Credible Expert Testimony of Dr. Davis and Dr. Israel in Rendering Her Decision

The Complainant erroneously contends that the Company's expert witnesses, Dr. Israel and Dr. Davis, have offered biased opinions and lack credibility. (Exceptions at 9-17) Therefore, the Complainant claims that the ALJ erred in relying on their testimony.[1] (Exceptions at 9-17)

In actuality, both Dr. Israel and Dr. Davis are highly respected and qualified experts in their respective fields. Dr. Israel has over 40 years of experience in treating patients and conducting medical research, and 30 years teaching medicine and science to medical students, graduate students, interns, residents, and practicing physicians. (PPL RB at 7) He has published over 245 medical research studies in leading scientific journals such as the *New England Journal of Medicine, Cancer Research* and *Nature*, among others. (PPL RB at 7) Moreover, Dr. Israel has written chapters in medical textbooks and is a co-Editor of the textbook The Molecular Basis of Cancer. (PPL RB at 7) Throughout his career, Dr. Israel has peer-reviewed scientific proposals for major research organizations such as the U.S. National Cancer Institute, Cancer Research UK, and German Cancer Aid, among others. (PPL RB at 7-8) He also has served as an editor and peer reviewer for leading scientific journals, such as *Clinical Cancer Research, Neuro-Oncology, Cancer Research,* and others. (PPL RB at 8)

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[1] The Complainant also erroneously avers that: (1) the ALJ should have suppressed Dr. Davis's testimony, and her failure to rule on this motion to suppress that he made in his Reply Brief violated 16 Pa. Code § 42.34; and (2) the ALJ should have revoked Attorney Renner's admission *pro hac vice*. . (Exceptions at 4-6, 9) However, both of these arguments were made for the first time in the Complainant's Reply Brief, when the Company had no opportunity to respond. Therefore, the Complainant's actions were procedurally improper and violated PPL Electric's due process rights. *See Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (citation omitted); *Application of Safe Harbor Water Power Corp.*, 2010 Pa. PUC LEXIS 39, at *55-56 (Feb. 5, 2010) (Initial Decision), *became final*, Docket No. A-2008-2078319 (Order entered June 22, 2010). Even if these arguments were properly raised, which they were not, the Complainant's arguments are without merit. The ALJ properly relied on the credible and reliable expert testimony offered by Dr. Davis in this proceeding, as explained in these Replies to Exceptions. Further, 16 Pa. Code § 42.34 is a regulation of the Pennsylvania Human Rights Commission and has no applicability in this proceeding. *See* 16 Pa. Code, Subpart A. Moreover, as demonstrated in PPL Electric's Motion for Admission *Pro Hac Vice*, Attorney Renner's qualifications, experience, and ethics are beyond reproach. (*See* PPL Motion for Admission *Pro Hac Vice* (filed Dec. 18, 2017))

The high quality of Dr. Israel's scientific research and his outstanding contributions to medical science has been widely recognized by his peers in the scientific community. (PPL RB at 8) Dr. Israel is an elected Fellow of the American Association for the Advancement of Science, an elected member of the Association of American Physicians, and an elected member of the American Society for Clinical Investigation, each of which is recognition by his peers of the scientific merit of his work and his commitment to advancing medical science. (PPL RB at 8) He has provided scientific advice and direction to a number of eminent organizations by serving on their advisory boards, such as the Science Advisory Board for the Yale Cancer Center, which he chaired for almost a decade, and the External Advisory Boards for the Children's Cancer Research Institute at the University of Texas Health Science Center, the University of Nebraska Eppley Cancer Center, the Carbone Cancer Center at the University of Wisconsin, and the National Brain Tumor Society, among others. (PPL RB at 8) He also has served on the Board of Scientific Counselors for the NCI. (PPL RB at 8)

During his work at the NCI, Dr. Israel was awarded two U.S. Public Health Service commendation medals. (PPL RB at 8) In 1998, he received the Farber Award, which is awarded annually by the American Association of Neurological Surgeons for excellence in cancer research. (PPL RB at 8) In 2014, he received the C. Everett Koop Courage Award for the pursuit of evidence-based medicine. (PPL RB at 8)

Dr. Davis is an active and highly regarded scientific researcher with over 30 years of experience teaching Physics, Electrical Engineering, Electromagnetics, and Radio Frequency Electromagnetics. (PPL RB at 9) He has conducted many scientific studies in these fields and has published over 250 studies in peer-reviewed scientific journals. (PPL RB at 9) In particular, he has conducted a substantial amount of research on RF fields of the type produced by the AMI

meters being used by the Company. (PPL RB at 9) Furthermore, Dr. Davis has served on expert committees that have evaluated the scientific research on RF fields, including the Institute of Electrical and Electronic Engineers ("IEEE") Committee on Man and Radiation ("COMAR") and as chair of the Subcommittee on Radio Frequency Fields, which consists of experts who examine the scientific research on RF fields and evaluate the IEEE exposure guidelines. (PPL RB at 9) Dr. Davis has received a number of honors and awards for his teaching and research and has provided expert advice on electromagnetic fields, including RF fields dosimetry and proposed mechanisms for biological effects other than heating, to the United Kingdom Health Protection Agency, the U.S. National Institutes of Health and the U.S. Food and Drug Administration's Center for Devices and Radiological Health. (PPL RB at 9)

Here, Dr. Israel and Dr. Davis offered independent, balanced, and unbiased expert opinions about the scientific and medical merits of the RF exposure and health claims Complainant raised in this case. (PPL RB at 9) Both Dr. Israel and Dr. Davis have unblemished records of having their expert opinions relied upon in proceedings, including before this Commission.[2] Therefore, the Complainant's allegations of bias and lack of credibility are entirely unfounded.[3]

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[2] *See, e.g.*, *Newman v. Motorola, Inc.*, 218 F. Supp.2d 769 (D. Md. 2002), *affirmed*, 78 Fed. Appx. 292 (4th Cir. 2003); *Lakey v. Puget Sound Energy, Inc.*, 296 P.3d 860 (Wash. 2013); *Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line in Portions of Lackawanna, Luzerne, Monroe, Pike and Wayne Counties, Pennsylvania*, Docket Nos. A-2009-2082652, *et al.* (Order entered Feb. 12, 2010); *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Order entered May 3, 2018).

[3] In addition, the Complainant's claim that Dr. Davis and Dr. Israel incorrectly stated the number of hearings in which they have appeared or will appear is without merit. (Exceptions at 10-12) The Complainant fails to recognize that many of those cases were not set for hearing at the time of the evidentiary hearing. Indeed, many of the formal complaints were not even filed yet. Furthermore, several of the cases were resolved through the filing of certificates of satisfaction before hearings were even held.

3. The Commission Should Disregard the Extra-Record Evidence that the Complainant Improperly Attempts to Introduce in His Exceptions

As in his briefs, the Complainant tries to improperly introduce extra-record evidence in Exceptions. (Exceptions at 16-17) Specifically, the Complainant cites and refers to testimony given by Dr. Davis and Dr. Israel in Commission proceedings involving PECO. (Complainant's RB at 20-22) However, it is well-established that parties cannot introduce evidence for the first time at the briefing or exceptions stage.[4] "The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness." *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citations omitted). "Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal." *Id.* (citations omitted).

Here, none of this alleged testimony is in the record. By waiting until to present these new facts and materials until after the record closed, the Complainant denied PPL Electric an opportunity to review and inspect that evidence, to cross-examine the Complainant about that evidence, and to present evidence in rebuttal. Therefore, it would violate PPL Electric's due process rights for any findings of fact to be based upon or influenced by the Complainant's extra-record evidence. Thus, the Commission should reject the Complainant's attempt to introduce this extra-record evidence and disregard all arguments he makes based thereon.

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[4] *See, e.g., Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45, at *8-9 (Order entered Feb. 10, 1994) (denying party's attempt to introduce extra-record evidence in its exceptions); *Trucco v. PPL Elec. Utils. Corp.*, 2002 Pa. PUC LEXIS 21, at *5 (Order entered Mar. 29, 2002) (noting that ALJ Paist "struck those portions of the Complainants' Main Brief which referenced extra-record evidence, including those various exhibits attached to that Main Brief"); *Application of Kenneth Scott Cobb, t/a Kennys Transp. Serv.*, 2012 Pa. PUC LEXIS 1802, at *24 (Nov. 16, 2012) (Initial Decision) (Barnes, J.) (granting motion to strike the applicant's brief "for attempting to introduce new facts and documents into evidence not previously offered or admitted into the record at the hearing of September 5, 2012"), *became final*, Docket No. A-2011-2280175 (Order entered Jan. 7, 2013).

4. The ALJ Properly Found that the Complainant Has Failed to Prove that the New AMI Meter Is Unsafe and Would Cause Fires

The ALJ correctly held that the Complainant's fire safety allegations are not supported by any evidence. (ID at 17-19) The Complainant contends in his Exceptions that within the two hours of the heat alarm in the new AMI meter being triggered, a house could catch on fire. (Exceptions at 18)

However, the record demonstrates that the new AMI meter is better equipped and made of more resistant materials to prevent fires. (PPL MB at 32-33) Indeed, PPL Electric set stringent qualifications during its testing and selection of the available RF Mesh meters. (PPL RB at 14) Among those qualifications was a requirement that AMI meter's materials be able to withstand a thermal index of 160 degrees Celsius before breaking down. (PPL RB at 14) The AMI meter selected by PPL Electric was "the only meter that met and exceeded" the Company's qualifications. (PPL RB at 14)

Further, the Company cannot currently monitor the temperature of the Complainant's current meter. (PPL RB at 14) In the new AMI meter, however, there is a heat alarm, so when the temperature of the meter hits an established, "very conservative" level, the Company is alerted of the issue. (PPL MB at 32) Moreover, PPL Electric takes 15-minute interval temperature readings from the meter, so it can track the meter's temperature and identify any current issues or problematic trends. (PPL MB at 32) If the Company detects an issue with the meter's temperature, PPL Electric will dispatch a technician to investigate. (PPL MB at 32) Therefore, as PPL Electric witness Larson explained, the new AMI meter is better than what the Company has in place now because "we actually monitor the temperature." (PPL RB at 14)

In addition, PPL Electric has examined the issues with other utilities' meters and has taken many steps to prevent fire incidents similar to the ones alleged by the Complainant. (PPL

MB at 32) PPL Electric witness Larson testified that the "root cause of a many of these fires was "loose connections within the meter base." (PPL MB at 32) When there are loose connections within the meter base, there could be rapid heat built up. (PPL MB at 32) PPL Electric has taken several steps to mitigate this risk. (PPL MB at 32) The Company enhanced its inspection criteria so that its service technicians are better able to identify any issues. (PPL MB at 32) PPL Electric also ensures that the new AMI meters meet the American National Standards Institute ("ANSI") requirements. (PPL MB at 32) Thus, as the ALJ correctly concluded, the new AMI meter is not a fire safety risk and can actually prevent fires.

Based on the foregoing, the Complainant's Exceptions Nos. 1, 2, 3, 7, and 9 are without merit and should be denied.

B. REPLY TO EXCEPTION NO. 4 – THE ALJ PROPERLY DISREGARDED THE COMPLAINANT'S UNFOUNDED LEGAL ARGUMENTS

The Complainant contests the ALJ's decision to disregard several unfounded legal arguments that he made in challenging the new AMI meter installation. (Exceptions at 18-24) The Complainant first claims that installing the new AMI meter would constitute discriminatory service under Section 1502 of the Public Utility Code because not all persons in Pennsylvania are receiving the new AMI meters. (Exceptions at 18-19) Further, he alleges that the Company would be violating the Equal Protection Clause under the Fourteenth Amendment of the U.S. Constitution because he allegedly is being discriminated. (Exceptions at 19-20) The Complainant also contends that the AMI meter would collect information about his electric usage without a warrant and that this would violate the Fourth Amendment of the U.S. Constitution and Article I, Section 8 of the Pennsylvania Constitution. Moreover, the Complainant argues that the Company violated Section 5 of the Federal Trade Commission Act

("FTCA") by not educating customers about the alleged adverse health effects caused by the new AMI meters. (Exceptions at 18-24) All of the Complainant's arguments are without merit.

First, installing the new AMI meters is not discriminatory service under Section 1502 of the Public Utility Code. (PPL RB at 18) The Complainant mistakenly assumes that installing the new AMI meter is discriminatory service because not every person in Pennsylvania is having one installed. (Exceptions at 18-19) In actuality, Section 1502 prohibits unreasonable discrimination of service "as between localities or as between classes of service" within a single public utility's service territory. 66 Pa. C.S. § 1502. Here, PPL Electric is installing new AMI meters for all of its 1.4 million customers, including the Complainant. (PPL Exh. No. 3, p. 1) Therefore, the Company is treating the Complainant no differently than its other customers. In fact, to grant the Complainant an exemption would arguably be granting him an unreasonable preference over similarly-situated customers in his rate class. *See* 66 Pa. C.S. § 1502.

Second, PPL Electric's installation of the new AMI meter will not violate the Fourth and Fourteenth Amendments of the U.S. Constitution and Article 1, Section 8 of the Pennsylvania Constitution because the Company is not a state actor. For there to be a deprivation of constitution rights, two elements must be met: (1) "the deprivation must be caused by the exercise of some right or privilege created by the state"; and (2) "the party charged with the deprivation must be a person who may fairly said to be a state actor."[5]

Here, PPL Electric is a utility corporation, not a state actor. In *Jackson v. Metropolitan Edison Co.*, the U.S. Supreme Court found that a fellow Pennsylvania electric utility, *i.e.*, Metropolitan Edison Company, was not a state actor, even though it arguably had "monopoly

[5] *Commonwealth v. Corley*, 491 A.2d 829, 832 (Pa. 1985) (emphasis added) (quoting *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 937 (1982)); *see Commonwealth v. Demor*, 942 A.2d 898, 899-900 (Pa. Super. 2008) (applying principles outlined in *Corley* to Fourth Amendment analysis); *W. Pa. Socialist Workers 1982 Campaign v. Conn. General Life Ins. Co.*, 485 A.2d 1, 5-6 (Pa. Super. 1984) ("[T]he search and seizure provisions of Article 1, section 8, have been held inapplicable to the conduct of private parties.") (citations omitted).

power" and "provided an essential public service required to be supplied on a reasonably continuous basis." *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351-53 (1974). Therefore, in keeping with the U.S. Supreme Court's holding in *Jackson*, PPL Electric similarly is not a state actor. Moreover, even if the Company were a state actor, the Seventh Circuit Court of Appeals recently found that the collection of smart meter data by a city-owned public utility was a reasonable warrantless search. *See Naperville Smart Meter Awareness v. City of Naperville*, 2018 U.S. App. LEXIS 22834, at *10-14 (7th Cir. 2018) Thus, PPL Electric cannot, by installing the new AMI meter and collecting the Complainant's usage information, violate the Fourth and Fourteenth Amendments of the U.S. Constitution and Article I, Section 8 of the Pennsylvania Constitution.

Third, the Complainant's allegation that installing the new AMI meter violates the FTCA is beyond the Commission's jurisdiction. As a "creature of statute," the Commission "has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication." *Feingold v. Bell of Pa.*, 383 A.2d 791, 794 (Pa. 1977) (citing *Allegheny Cnty. Port Auth. v. Pa. PUC*, 237 A.2d 602 (Pa. 1967); *Del. River Port Auth. v. Pa. PUC*, 145 A.2d 172 (Pa. 1958)). The Commission cannot grant itself by regulation or order authority that was not conferred upon it by the Legislature. *See W. Pa. Water Co. v. Pa. PUC*, 370 A.2d 337, 339-40 (Pa. 1977) (citations omitted); *Fairview Water Co. v. Pa. PUC*, 502 A.2d 162, 165-66 (Pa. 1985) (citations omitted); *Fed. Deposit Ins. Corp. v. Bd. of Fin. & Revenue*, 84 A.2d 495, 499 (Pa. 1951) (citations omitted).

Here, nothing in the Public Utility Code grants the Commission jurisdiction to enforce these federal statutes. Moreover, the Federal Trade Commission is empowered to enforce the FTCA through civil actions filed in a "United States district court or in any court of competent

jurisdiction of a State." 15 U.S.C. §§ 45, 57b. No private right of action exists under the FTCA. *Carpenter v. Kloptoski*, 2010 U.S. Dist. LEXIS 22262, at *34-35 (M.D. Pa. 2010) (citations omitted); *Gachau v. RLS Cold Storage*, 2018 U.S. Dist. LEXIS 68552, at *6-7 (D.N.J. 2018) (citations omitted). Thus, the Commission lacks jurisdiction over the Complainant's claim that installing the new AMI meter violates the FTCA.

Based on the foregoing, the Complainant's Exception No. 4 should be denied.

C. REPLY TO EXCEPTION NO. 5 – THE ALJ CORRECTLY DISREGARDED THE COMPLAINANT'S EVIDENCE RELATED TO THE DRAFT, UNPUBLISHED NATIONAL TOXICOLOGY PROGRAM STUDY

The Complainant contests the ALJ's decision to disregard the draft, unpublished National Toxicology Program ("NTP") study (*i.e.*, Complainant's Exhibit M). (Exceptions at 24-27) According to the Complainant, the draft NTP study establishes that the new AMI meters will cause or contribute to adverse health effects. (Exceptions at 24) He also presents additional information about a peer-review panel that made recommendations about the draft NTP study. (Exceptions at 25-27) The Complainant's Exception is without merit.

The ALJ properly disregarded the Complainant's evidence related to the draft NTP study. The draft study is irrelevant because it concerns RF fields from cell phones and does not address RF fields from the AMI meters being used by PPL Electric. (PPL MB at 26) Moreover, the document lacks authenticity because its authors were not presented to authenticate the accuracy of the statements in the document. (PPL MB at 26) Further, as shown on the document and explained by Dr. Davis, the document is stamped "DRAFT" and "NOT FOR ATTRIBUTION" and states on its cover that "This DRAFT Technical Report is distributed solely for the purpose of predissemination peer review under the applicable information quality guidelines. It has not been formally disseminated by the NTP. It does not represent and should not be construed to

represent NTP determination or policy." (Complainant's Exhibit M; Tr. 105-07) Dr. Davis also testified that the draft NTP study should not be compared to the RF fields being emitted from the new AMI meter because "the NTP exposure is 3.3 million times higher than what one would experience if one approached PPL's Smart Meter." (Tr. 107) (emphasis added)

In addition, PPL Electric observes that all of the Complainant's information about the "3-day peer review" panel, appearing on pages 25 through 27, is not in the record. The Complainant first improperly presented this information in his Reply Brief, when the Company would have no opportunity to respond. (Complainant's RB at 37-43) Now, in his Exceptions, the Complainant again tries to introduce this extra-record evidence. It is well-established that parties cannot introduce new evidence at the briefing or exceptions stage.[6] Therefore, the Commission should disregard this portion of the Complainant's Exceptions entirely.

For these reasons, the Complainant's Exception No. 5 should be denied.

D. REPLY TO EXCEPTION NO. 6 – THE ALJ CORRECTLY GAVE LITTLE OR NO WEIGHT TO THE COMPLAINANT'S HEARSAY EXHIBITS

The Complainant disputes the ALJ's decision to give little or no weight to his exhibits, besides Complainant's Exhibit 1, on the grounds that they are hearsay. (Exceptions at 27-29) According to the Complainant, the Commission is "not bound to the technical rules of evidence," and all of this hearsay evidence should be considered by the Commission in issuing a final ruling. (Exceptions at 28-29) The Complainant's Exception lacks merit.

The Complainant fails to recognize that under Pennsylvania's "Walker Rule," a party's "[h]earsay evidence, properly objected to, is not competent evidence to support a finding." *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) (citations omitted). Even if hearsay evidence is "admitted without objection," the ALJ must give the

[6] *See* note 4, *supra.*

evidence "its natural probative effect and may only support a finding . . . if it is corroborated by any competent evidence in the record," as "a finding of fact based solely on hearsay will not stand." *Id.* at 370 (citations omitted).[7]

Here, PPL Electric objected to many of the Complainant's exhibits because they were hearsay and not subject to a hearsay exception, specifically Exhibits D, F, K through N2, P through R, T, X through Z, 2A, 2B, 2F, 2H 2J, 2S through 2Z, and 3A, 3C, and 3E through 3H. (PPL MB at 24-25; PPL Motion in Limine ¶¶ 16-25) Indeed, PPL Electric has a statutory right to cross-examine persons "as may be required for a full and true disclosure of the facts." 66 Pa. C.S. § 332(c). Because the authors of these hearsay statements did not testify, the Company was denied this right and unable to test the veracity of their statements. (PPL MB at 25) It is for this reason such hearsay is generally inadmissible and should not be relied upon in this proceeding.[8]

Even if the Company failed to properly object to this evidence, which it did not, the Complainant presented no "competent evidence" to corroborate those statements. *Walker* at 370. Therefore, as the Commission has previously held, "[w]hether the ALJ erred by initially admitting the hearsay evidence is an issue we need not address" because "[e]ven if such evidence can be admitted, it is clear that . . . such evidence may not be given any weight in an administrative proceeding." *Anserphone, Inc. & Elite Answering Serv. v. The Belle Tele. Co. of Pa.*, 1993 Pa. PUC LEXIS 70, at *29-30 (Order entered April 1, 1993). Thus, the Complainant's

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[7] The "Walker Rule" has been affirmed by the Pennsylvania Supreme Court. *Rox Coal Co. v. Workers' Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002).

[8] The Company notes that expert witnesses can rely on hearsay in forming their opinions, where such material is of a type customarily relied on by experts in their profession. *See Lower Makefield Twp. v. Lands of Dalgewicz*, 4 A.3d 1114, 1122 (Pa. Cmwlth. 2010), *affirmed*, 67 A.3d 772 (Pa. 2013); *Collins v. Cooper*, 746 A.2d 615, 618 (Pa. Super. 2000); *Primavera v. Celotex Corp.*, 608 A.2d 515, 520-21 (Pa. Super. 1992); Pa.R.E. 703. However, the Complainant is not an expert witness, and he presented no expert witnesses, let alone ones who could rely on these materials. Moreover, although hearsay statements, such as articles, studies, and treatises, can be relied upon by expert witnesses in forming their opinions, the substance of those hearsay statements is not permitted to be entered into the record to prove the truth of the matter asserted. *See Klein v. Aronchick*, 85 A.3d 487, 503-04 (Pa. Super. 2014) (citing *Aldridge v. Edmunds*, 750 A.2d 292, 297-98 (Pa. 2000)); *Nigro v. Remington Arms Co.*, 637 A.2d 983, 993 (Pa. Super. 1993) (citations omitted).

hearsay documents cannot support a finding of fact that the new AMI meters cause, contribute to, or exacerbate any illnesses, and the ALJ properly concluded that these hearsay exhibits should be given little to no weight. (ID at 14)

In addition, the Company identified, in detail, several other substantial flaws with the Complainant's exhibits. For example, many of the exhibits lacked authenticity, were irrelevant to the issue of whether AMI meters cause adverse health effects, and were inherently unreliable. (PPL MB at 26-31) Therefore, the Complainant's exhibits lack merit, should be afforded no weight, and cannot support any findings of fact in this proceeding. (PPL MB at 31)

For these reasons, the Complainant's Exception No. 7 should be denied.

E. REPLY TO EXCEPTION NO. 8 – THE ALJ CORRECTLY HELD THAT PPL ELECTRIC IS LEGALLY REQUIRED TO INSTALL THE NEW AMI METER

The Complainant alleges that the ALJ erred in concluding that PPL Electric is legally required to install the new AMI meter on his premises. (Exceptions at 33-35) He maintains that "nowhere in Act 129, the orders of the Commission or PPL's tariff is there any requirement that every single customer must accept an RF emitting smart meter." (Exceptions at 33) Further, the Complainant cites certain comments made by legislators as allegedly supporting his interpretation that Act 129 was intended as an opt-out bill. (Exceptions at 34) Moreover, the Complainant reiterates that he has health concerns about the new AMI meter that warrant an opt-out. (Exceptions at 34-35) The Complainant also argues that the word "shall" in Act 129 actually means "may," thereby allowing him to opt-out of the AMI meter installation. (Exceptions at 35) The Complainant's arguments completely lack merit.

The ALJ correctly held that PPL Electric is legally required to install the RF Mesh meter on the Complainant's property by Act 129 and Commission orders. (ID at 21-23) Section 2807(f) of the Public Utility Code prescribes that electric distribution companies, like PPL

Electric, must file smart meter plans and "**shall** furnish smart meter technology" in any of the following situations: (1) "[u]pon request from a customer that agrees to pay the cost of the smart meter at the time of the request"; (2) "[i]n new building construction"; and (3) "[i]n accordance with a depreciation schedule not to exceed 15 years." 66 Pa. C.S. § 2807(f)(1)-(2) (emphasis added). In interpreting the smart meter provisions of Act 129, the Commission declared that EDCs must "deploy smart meters system-wide" because of the requirement that smart meters be deployed "in accordance with a depreciation schedule not to exceed 15 years." *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655, p. 14 (Order entered June 24, 2009) ("*Smart Meter Implementation Order*"). The Commission also "recognize[d] that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment." *Id.*, pp. 9, 14.[9] Therefore, PPL Electric must install the new smart meters for every customer in its service territory, including the Complainant.

In addition, nothing in Act 129 permits a customer to "opt-out" of a smart meter installation. (PPL MB at 11) Indeed, the Commission previously has found in several cases that Act 129 mandates the installation of new AMI meters and contains no such opt-out language. *See, e.g.*, *Starr v. PECO Energy Co.*, Docket No. C-2015-2516061, p. 11 (Order entered Sept. 1, 2016); *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602, pp. 8-10 (Order entered May 3, 2018). Specifically, in *Starr*, the Commission observed that it has "rejected similar claims that the installation of smart meters is not mandatory or that an opt-out is permissible under Act 129." *Starr* at p. 11. Although bills have been proposed in the General Assembly to

[9] *See also Springirth v. Nat'l Fuel Gas Distrib. Corp.*, 1991 Pa. PUC LEXIS 44, at *1-3, 6, 16-17 (Order entered Apr. 12, 1991) (dismissing complaint of customer seeking to make installation of automated meter reading devices optional, noting that the Commission previously found in another case that "[t]he customer should not be given the option of refusing installation of equipment" because "[t]o permit customer discretion in this area would be inefficient and uneconomical") (quoting *Stenker v. The York Water Co.*, Docket No. C-871318 (Order entered July 27, 1987)).

add such an opt-out (see, e.g., House Bill 1564 of 2017-2018 Session), they have not been enacted. (PPL MB at 11) Thus, the Complainant cannot opt-out of the AMI meter installation.

Furthermore, a few legislators' comments about the statute do not control the analysis of whether an opt-out is permitted under Act 129. (PPL RB at 16) Under the Pennsylvania Statutory Construction Act, "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa. C.S. § 1921(b). Here, the plain language of Act 129 states that electric distribution companies, like PPL Electric, "shall" install the new AMI meters. *See* 66 Pa. C.S. § 2807(f)(2) (emphasis added). Importantly, and contrary to the Complainant's interpretation, the word "shall" has been declared by Pennsylvania courts to mean "must."[10] Therefore, the AMI meter installation is mandatory, and a few legislators' comments about the interpretation of the statute need not and should not be considered. *See* 1 Pa. C.S. § 1921(c).[11]

Finally, as explained previously in Section II.A, *supra*, there is no reliable medical or scientific basis to conclude that the new AMI meter will cause or contribute to any adverse health effects. Thus, the installation of the new AMI meter would not violate Section 1501 of the Public Utility Code.

Based on the foregoing, the Complainant's Exception No. 8 should be denied.

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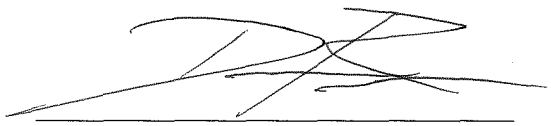
[10] *See Whiteford v. Dep't of Transp.*, 728 A.2d 1127, 1131 (Pa. Cmwlth. 2001) ("[T]he word 'shall' denotes a mandatory, not discretionary instruction.") (citations omitted); *C.B. v. J.B.*, 65 A.3d 946, 952 (Pa. Super. 2013) (finding that "[t]he use of 'shall' means . . . must" and that to hold otherwise "would be to flout the legislative will"); *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1233 (Pa. 2004) ("[W]e are not compelled to pretend that 'shall' means 'may' under Section 3146.6(a)."); *Griesmer v.* Hill, 36 Pa. Super. 69 (Pa. Super. 1908) ("This provision is mandatory, and not directory merely. It means what it says. The word 'shall' means 'shall' . . . . [The defendant] not only may but 'must.'").

[11] Additionally, even if the statute were ambiguous, the "administrative interpretations of such statute" should be considered and given substantial weight. *Id.* § 1921(c)(8). Indeed, the Commission, which is the entity charged with implementing and enforcing Section 2807(f) of the Public Utility Code, has issued several orders holdings that there is no opt-out under the statute. (PPL MB at 11-12) Thus, there is no opt-out under Act 129, and PPL Electric must install the new AMI meters.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in the Initial Decision of Administrative Law Judge Elizabeth H. Barnes and the limited Exception filed by PPL Electric Utilities Corporation, the Company respectfully requests that the Pennsylvania Public Utility Commission: (1) deny the Exceptions filed by John Kline; and (2) adopt the Initial Decision consistent with the Company's limited Exception.

Respectfully submitted,



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

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

Curtis S. Renner (DC ID # 446187)
Watson & Renner
1901 Pennsylvania Ave., NW
Suite 1005 - ENS
Washington, DC 20006
Phone: 202-737 6302
E-mail: crenner@w-r.com

Date: September 17, 2018

Attorneys for PPL Electric Utilities Corporation