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March 8, 2019

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

**Re: Patti Lynn Caesar v. PECO Energy Company**  
**Docket No. C-2017-2605462**

Dear Secretary Chiavetta:

PECO Energy Company's Reply *Exceptions* are enclosed for filing.

Very truly yours,



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

Patti Lynn Caesar :  
 :  
 v. : Docket No. C-2017-2605462  
 :  
 PECO Energy Company :

CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that on March 8, 2019, I served a copy of PECO Energy Company's *Reply Exceptions*, in the above matter, upon all interested parties via email and overnight delivery to:

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Dated: March 8, 2019



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Patti Lynn Caesar**

**v.**

**PECO Energy Company**

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**C-2017-2605462**

**Reply Exceptions of PECO Energy Company**

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## **Introduction**

On March 6, 2019, PECO was served with Ms. Caesar's Exceptions in this proceeding. PECO hereby provides its Reply Exceptions. Ms. Caesar did not number her Exceptions<sup>1</sup>; PECO has therefore taken the liberty of numbering Ms. Caesar's Exceptions for reference convenience.

## **Replies to Exceptions**

### **I. Reply to Exception 1 -- Number of exhibits**

Ms. Caesar's First Exception (pp 3-7) goes to whether the Initial Decision ("I.D.") was correct in stating (p. 2) that Ms. Caesar introduced only one exhibit at the evidentiary hearing. Ms. Caesar alleges (p. 6): "Actually, this is incorrect. I introduced 12."

According to the transcript, Ms. Caesar introduced only one exhibit into the evidentiary record – a letter from her treating physician, Dr. Birgit Rakel. Tr. 3 (Index to Exhibits).<sup>2</sup>

Certainly, Ms. Caesar had additional documents with her at the evidentiary hearing, and there was on-the-record discussion of whether she would be allowed to introduce them. Ms. Caesar described (Tr. 16) these other documents as "letters to schools [from physicians and researchers] saying that they wanted wireless technology to not be in schools." Ms. Caesar requested (Tr. 17) to introduce these letters into the record.

PECO (Tr. 17-18) objected to the introduction of those letters because they are hearsay:

[T]hey are hearsay letters, [in] that the authors of those letters are not in the room for us to cross examine about the basis for their conclusions. These are letters from some

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<sup>1</sup> 52 Pa. Code §5.533(b): "Each exception must be numbered . . . ."

<sup>2</sup> The I.D. gave little weight to the letter from Dr. Rakel, stating (p. 15) that: "Also, while a physician signed a letter stating that Ms. Caesar was sensitive to EMFs and discussed claims that EMFs caused health problems, that letter and the opinion therein is not given much weight because it was established that the Complainant drafted some of the letter, parts of the letter were taken from form letters and statements of advocacy groups opposed to smart meters and the physician signing the letter was not present at the hearing for cross examination."

advocates, some doctors, to school boards saying that I don't think that you should use WiFi in your schools. The authors include Dr. [Martin] Pall who appeared and was cross examined in this room for three days.<sup>3</sup> They include Dr. David Carpenter who appeared before the Commission in 2010 in a transmission line case and who the Commission found was not a credible source, that he was sincere, but that his beliefs were not founded in science.<sup>4</sup> \* \* \* So we object to those letters being a part of this hearing in any way whatsoever.

Ms. Caesar concurred (Tr. 18) that the letters are hearsay. The ALJ (Tr. 19) sustained PECO's objection and the letters were not allowed to be introduced into the evidentiary record. The I.D. is thus correct in stating that Ms. Caesar introduced one exhibit.

## II. Reply to Exception 2 -- *Pro hac vice* admission

Ms. Caesar's Second Exception is comprised of a small cluster of arguments regarding *pro hac vice* admission of PECO's outside counsel.

By way of background, on July 13, 2018, Ms. Caesar filed her Main Brief, in which she argued (pp. 25-26) that the testimony of PECO's expert witnesses should be stricken because PECO had not made a motion to admit its outside counsel to appear *pro hac vice*. On July 16,

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<sup>3</sup> Dr. Pall appeared in the joint evidentiary hearings in September 2016 in *Murphy v PECO*, C-2015-2475726; *Povacz v PECO*, C-2015-2475023 and *Randall/Albrecht v PECO*, C-2016-2537666. Dr. Pall's testimony and cross-examination took two days, and PECO spent more than an additional day presenting expert testimony that responded to Dr. Pall's testimony. In their respective September 25, 2018 Main Briefs, the *Murphy/Povacz/Randall-Albrecht* complainants made no mention of Dr. Pall's testimony other than to state (p. 27, fn1) that they chose to "lighten the burden of evidentiary review on the Commission and otherwise simplify the issues by not calling attention to the voluminous testimony of Dr. Pall." Clearly, the ALJ was correct not to allow Ms. Caesar to introduce a letter from Dr. Pall without subjecting his opinions to similar rigorous cross-examination and rebuttal.

<sup>4</sup> Dr. Carpenter appeared in *PPL's Roseland-Susquehanna 500 kV Transmission Line Application* (A-2009-2082652 and A-2009-2082652) and was subject to cross-examination and rebuttal testimony. The Commission concluded (Feb. 12, 2010 Opinion and Order, pp. 112-13) that: "The record evidence shows that Dr. Carpenter's opinions were flawed and were not based on a reliable and objective review of the scientific research. . . . In light of this overwhelming evidence, there is no good basis to give any weight to Dr. Carpenter's extreme views." Again, the ALJ was correct not to admit an out-of-court statement by this person.

2018, PECO filed a Motion to admit its outside counsel to appear *pro hac vice*. On August 6, 2018, Ms. Caesar filed a six-page answer to that Motion in which she objected to *pro hac vice* admission. On August 9, 2018, PECO filed its Reply to Ms. Caesar's objection. On August 17, 2018, the ALJ issued an Order in which she admitted PECO's outside counsel to appear *pro hac vice*. On August 23, 2018, Ms. Caesar filed a request for an extension of time to file an interlocutory appeal of the ALJ's *pro hac vice* ruling. On October 2, 2019, ALJ Heep issued an Order in which she allowed Ms. Caesar until October 12, 2019 to file her interlocutory appeal. Ms. Caesar did not file an interlocutory appeal. The I.D. was issued on January 11, 2019.

The I.D. addressed Ms. Caesar's *pro hac* arguments, stating (pp. 11-12):

In her brief, the Complainant contests the granting of PECO's motion to admit Mr. Watson *Pro Hac Vice* and contends that the testimony of Dr. Davis and Dr. Israel should be stricken because it was presented through Mr. Watson. (Caesar Main Brief at 25-26).

The Complainant filed an opposition to PECO's motion on August 6, 2018. After full consideration of all positions, it was determined, that the admission of Mr. Watson was not prejudicial, *inter alia*, and the motion was granted. The Order dated August 17, 2018, fully discusses the issue. There is no basis upon which to reconsider that order here.

Pages 8-13 of Ms. Caesar's exceptions are a verbatim "cut-and-paste" of Ms. Caesar's August 6, 2018 Answer to PECO's Motion. PECO fully analyzed and responded to Ms. Caesar's August 6 arguments in its August 9, 2018 Reply,<sup>5</sup> and the ALJ fully considered and correctly rejected Ms. Caesar's arguments in her August 17, 2018 Order. PECO will not globally repeat its arguments, but instead refers the Commission to its August 9, 2018 Reply and the ALJ's August 17, 2018 Order.

Aside from cutting-and pasting her August 6 filing, Ms. Caesar's Second Exception makes three *pro hac* arguments. First, she claims (pp. 14-15, 19) that if the "whole story" was

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<sup>5</sup> PECO's Reply is uploaded and available on the Commission's website at <http://www.puc.state.pa.us/pdocs/1580373.pdf>.

known, the Commission would conclude that she was “prevented” from filing an interlocutory appeal on *pro hac* issues. Second, she argues (pp. 15, 19) that PECO’s Motion should be denied because, she says, it was filed “after the record was closed.” Third, she argues (p. 15) that ALJ Heep inappropriately “referenced multiple times in which complainant requested extension for filings,” and that such requests should not be seen as “a liability in deciding” her complaint. PECO will reply to each in turn.

As to Ms. Caesar’s claim that she was “prevented” from filing an interlocutory appeal, the most important fact is that Ms. Caesar has had a full and fair opportunity to present her arguments regarding *pro hac vice* admission. She presented those arguments to the ALJ before the ALJ issued her *pro hac* Order and she has presented them to the Commission in her Exceptions.

The primary purpose of interlocutory appeals is to provide a mechanism to accelerate the Commission consideration of arguments raised by a litigant. The interlocutory mechanism is reserved for exceptional circumstances in which the underlying proceeding can be expedited, or substantial prejudice prevented, if the Commission provides interim guidance rather than waiting to the exceptions stage to rule on the issue raised by the litigant.

Ms. Caesar has not even attempted to demonstrate that interlocutory review would have expedited the underlying proceeding or prevented substantial prejudice as compared to having the Commission resolve her *pro hac* concerns in its final Opinion and Order. Nor is it likely that she could have prevailed on a request for interlocutory review if she had actually filed one. When a virtually identical request for interlocutory review was made in *Mendez-Quigley v PECO*, C-2017-2617558, the Commission (September 20, 2018 Opinion and Order, pp. 11-12) declined to grant interlocutory review because it had “not found upon our review, that

interlocutory review at this stage in the proceeding will prevent substantial prejudice or expedite the conduct of the proceeding.”

Moreover, the facts simply do not support Ms. Caesar’s claim that she was “prevented” from filing a request for interlocutory review. On August 6, 2018, Ms. Caesar filed a six-page Answer in which she set forth her arguments against *pro hac vice* admission; the ALJ issued her Order granting *pro hac* admission on August 17, 2018. The Commission’s rules on petitions for interlocutory appeal require that the petition must be “not more than three pages” in length. 52 Pa. Code §5.302(a). All that Ms. Caesar needed to do was edit her prior filing from six pages down to three, and the ALJ gave her nearly two months to do so (the ALJ’s Order was issued on August 17; the ALJ allowed Ms. Caesar until October 12 to file). Ms. Caesar was not “prevented” from making such a filing – she just didn’t find time to do it.

Ms. Caesar thus has not been prejudiced by her failure to file an interlocutory review. She had ample opportunity to file a petition for interlocutory review but failed to do so; precedent indicates that she would not have been granted interlocutory review even if she had actually made such a filing; she had a full opportunity to present her arguments to the ALJ before the ALJ ruled; and Ms. Caesar’s Exceptions provide her with a full opportunity to present her arguments to the Commission. Her interlocutory review argument thus provides no basis for revising or rejecting the I.D. or the ALJ’s August 17, 2018 Order.

Ms. Caesar’s second argument in this section of her Exceptions (pp. 15, 19) is that PECO’s Motion should be denied because, she says, it was filed “after the record was closed.” PECO addressed this argument in its August 9, 2018 Reply (p. 12) and ALJ Heep’s August 17, 2018 Order succinctly and correctly dealt with this argument by stating (p. 5) that: “[T]he

Motion was filed after the hearing, and before the close of the record.”<sup>6</sup> More importantly, the ALJ concluded (p. 7) that PECO’s Motion should be granted notwithstanding the timing of PECO’s request because “there is nothing prejudicial to the parties through granting the admission of Mr. Watson *Pro Hac Vice Nunc Pro Tunc* and it would be inefficient and wasteful of the resources of the Commission and the parties to set this matter for another hearing because of the curable and technical error of the timing of the filing of the instant Motion.” While Ms. Caesar’s Exceptions repeat her initial position that the record was closed when PECO’s Motion was filed, she provides no analysis or argument to counter the ALJ’s correct conclusions that PECO’s Motion was filed before the record was closed and that Ms. Caesar did not demonstrate any prejudice from the timing of PECO’s filing.

Ms. Caesar’s third argument in this section of her Exceptions (p. 15) is that ALJ Heep inappropriately “referenced multiple times in which complainant requested extension for filings,” and that such requests should not be seen as “a liability in deciding” her complaint.

In actual fact, the I.D. discusses Ms. Caesar’s requests for extensions of time only in the History of the Proceedings section (pp. 3-4) of the I.D. It was wholly appropriate for the ALJ to include discussion of these requests in the History of the Proceeding section because these requests were made and granted and the history and timing of events in this proceeding cannot be fully understood without explaining why certain filing deadlines were initially set and then changed. It should also be noted that, having made that historical recitation, the ALJ did not discuss the requested extensions at any other point in the I.D. – there is nothing about Ms. Caesar’s requests for extensions in the sections on Findings of Fact, Discussion, Conclusions of Law, or Order. Moreover, there is nothing anywhere in the I.D. that suggests that the ALJ

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<sup>6</sup> The ALJ closed the record on January 11, 2019. See I.D., Ordering Paragraph 2.

treated these requests as a “liability” in deciding Ms. Caesar’s case. Ms. Caesar’s impression that the ALJ held her requests for extensions against her has no basis.

### **III. Reply to Exception 3 -- Findings of Fact**

Ms. Caesar’s Third Exception (pp. 16-19) is that the I.D. is factually incorrect in two of its Findings of Fact.

Finding of Fact 12 states: “Ms. Caesar has spent 15 to 20 hours per week in her office for four and a half years. (Tr. 53).” Ms. Caesar alleges that: “THIS IS INCORRECT. I HAVE BEEN WORKING AT A HOME OFFICE SINCE MARCH, 2017.”

Finding of Fact 13 states: “There are four AMI meters at her office building, one electric and three gas. (Tr. 61).” Ms. Caesar argues that: THIS IS IRRELEV[A]NT AS I HAVE NOT BEEN AT THE OFFICE SINCE MARCH, 2017.”

The hearing occurred on February 22, 2017, and therefore the Findings of Fact, which are based on the February 22 record transcript, obviously could not and do not reflect changes that Ms. Caesar made to her lifestyle after that time. The Findings of Fact correctly summarize the record testimony in this proceeding.

Moreover, the I.D.’s subsequent discussion of these Findings of Fact is not disturbed by Ms. Caesar’s post-hearing lifestyle changes. The I.D. states (p. 15) that: “Ms. Caesar testified that she spends 20 or so hours a week at her office. (Tr. 53). The building where her office is located has one electric and three gas meters, all AMI. (Tr. 61). However, Ms. Caesar reported no ill effects from the AMI meters at her office.” The fact that Ms. Caesar no longer goes to the office does not affect the I.D.’s conclusion that her regular exposure in the prior 4.5 years did not result in illness.

**Conclusion**

Ms. Caesar's Exceptions do not provide any basis to revise or reject the Initial Decision.

Her Exceptions should be denied and the Commission should adopt the Initial Decision.

Respectfully submitted,



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March 8, 2019