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June 7, 2019

***VIA ELECTRONIC FILING***

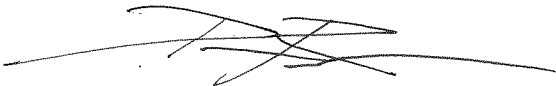
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Michelle P. White v. PPL Electric Utilities Corporation**  
**Docket No. C-2018-3003468**

Dear Secretary Chiavetta:

Enclosed please find the Replies of PPL Electric Utilities Corporation to the Exceptions of Michele P. White for filing 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*)

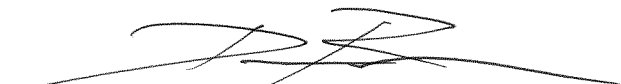
## CERTIFICATE OF SERVICE

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).

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Date: June 7, 2019



Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michele P. White,	:
	:
Complainant,	:
	:
v.	: Docket No. C-2018-3003468
	:
PPL Electric Utilities Corporation,	:
	:
Respondent.	:

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**REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE  
EXCEPTIONS OF MICHELE P. WHITE**

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Date: June 7, 2019

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## **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 Michele P. White (“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 her 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 May 27, 2019, the Complainant filed Exceptions to 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 without modification.

## **II. REPLIES TO EXCEPTIONS**

### **A. REPLIES TO EXCEPTION NO. 1<sup>1</sup> – THE ALJ PROPERLY REJECTED THE COMPLAINANT’S ARGUMENT THAT THE FEDERAL FAIR HOUSING ACT APPLIES TO THE COMPANY’S INSTALLATION OF THE NEW AMI METER**

The Complainant disputes the ALJ’s rejection of her claim that the Federal Fair Housing Act, 42 U.S.C. § 3601, *et seq.* (“Fair Housing Act”), applies to this case and supports her request that the Company not install the new AMI meter at her premises. (Exceptions, p. 1.) According

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<sup>1</sup> The Complainant’s Exceptions were not numbered as required by the Commission’s regulations. *See* 52 Pa. Code § 5.533(b). Accordingly, PPL Electric is responding to the Complainant’s arguments as though each was separately numbered.

to the Complainant, “[t]he Federal Fair Housing Act grants accommodations to those with disabilities including mental health accommodations.” (Exceptions, p. 1.)

The ALJ properly concluded that the Fair Housing Act has no applicability here. As a preliminary matter, the PUC completely lacks jurisdiction to enforce the Fair Housing Act. It is well-established that the PUC, as a creature of statute, “has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication.” *Feingold v. Bell*, 383 A.2d 791, 794 (Pa. 1977) (citations omitted). Here, nothing in the Public Utility Code or any other law grants the PUC jurisdiction to enforce the Fair Housing Act. In fact, “[t]he authority and responsibility for administering” the Fair Housing Act rests with “the Secretary of Housing and Urban Development.” 42 U.S.C. § 3608(a). Moreover, to the extent the Complainant wished to initiate an enforcement action, it must be commenced in “an appropriate United States district court or State court.” *Id.* § 3613(a)(1).

In addition, the Fair Housing Act generally prohibits discrimination in the sale or rental of housing, discrimination in residential real estate-related transactions, and discrimination in the provision of brokerage services. *See id.* §§ 3604-3406. None of these provisions apply to the Company installing the new AMI meter at the Complainant’s service address.

For these reasons, the Complainant’s Exception No. 1 should be denied.

**B. REPLY TO EXCEPTION NO. 2 – THE ALJ PROPERLY FOUND THAT THE COMPLAINANT FAILED TO SUSTAIN HER BURDEN OF PROOF THAT INSTALLING THE NEW AMI METER WOULD VIOLATE SECTION 1501 OF THE PUBLIC UTILITY CODE, THAT THERE IS A RELIGIOUS EXEMPTION UNDER ACT 129, AND THAT THE PUC LACKS JURISDICTION TO ENFORCE THE AMERICANS WITH DISABILITIES ACT**

The Complainant disputes the ALJ’s finding that she has failed to meet her burden of proof that installing the new AMI meter would violate Section 1501 of the Public Utility Code. (Exceptions, pp. 1-2.) According to the Complainant, the ALJ erred in finding that there is no

reliable scientific or medical basis to conclude that radiofrequency (“RF”) field exposure can cause or contribute to adverse health effects. (Exceptions, pp. 1-2.) The Complainant avers that she testified about her health-related concerns about the new AMI meter and claims that the meter “would aggravate a pre-existing mental-health condition.” (Exceptions, pp. 1-2.) The Complainant also states that the ID’s dismissal of her Complaint is a violation of the Americans with Disabilities Act, 42 U.S.C. § 12132, *et seq.* (“ADA”), and that her religious beliefs oppose the installation of the AMI meter. The Complainant’s Exception is without merit.

First, the ALJ properly concluded that there is no reliable scientific or medical basis to conclude that the AMI meter will not cause or contribute to any adverse health effects. (ID at 12-16.) Indeed, the Company presented thorough, credible, and reliable expert testimony and exhibits demonstrating the new AMI meter will not cause or contribute to any adverse health effects.

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 St. No. 1, p. 9.) 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 St. No. 1, p. 9.) The FCC continues to coordinate with the agencies and to consider whether new scientific research shows any adverse effects from RF fields. (PPL St. No. 1, pp. 9-10.)

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 St. No. 1,

p. 13; PPL Electric Exhibit CD-2.) 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 St. No. 1, p. 13.) 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 St. No. 1, p. 7.)

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 St. No. 1, p. 14.) 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 St. No. 1, p. 14.) Even 30 feet away from a person using a cell phone, the RF fields are 3 times higher than from the AMI meter. (PPL St. No. 1, p. 14.)

Furthermore, the existing background levels of RF fields at Complainant’s residence are many times higher than the fields from the AMI meter. (PPL St. No. 1, p. 15.) Dr. Davis testified that there are 10 television broadcast towers within a 50 mile radius of Complainant’s location. (PPL St. No. 1, p. 15.) Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainant’s residence are **10.9 times higher** than the RF signals from the AMI meter. (PPL St. No. 1, p. 15.) 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 St. No. 1, pp. 15-16.) 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 St. No. 2, p. 7.) 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 St. No. 2, p. 6.) 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 St. No. 2, p. 8.) Dr. Israel 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 St. No. 2, pp. 8-9.) Further, Dr. Israel provided examples of well-conducted animal studies on RF fields and cancer. (PPL St. No. 2, pp. 9-10.) These studies also did not find any increased incidence in cancer in the RF exposed animals compared to non-exposed animals. (PPL St. No. 2, p. 10.)

Based on the body of scientific research showing no consistent and reproducible effects from RF fields on cancer and other adverse health effects, the World Health Organization (“WHO”) has concluded that “no adverse health effects have been established as being caused by mobile phone use.” (PPL St. No. 2, p. 10.) Many other public health authorities, including agencies in Canada, the U.K., Sweden, Norway, the Netherlands, and New Zealand, among others, have recently reached similar conclusions. (PPL St. No. 2, pp. 10-11.) 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 St. No. 2, p. 11.)

In addition, Dr. Israel reviewed the published scientific research on EHS from the perspective of a medical doctor. (PPL St. No. 2, pp. 12-15.) 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 St. No. 2, p. 13.) This is consistent with a recommendation from the WHO. (PPL St. No. 2, pp. 12-13.) 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 St. No. 2, p. 13.) 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 St. No. 2, pp. 13-14.) 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 St. No. 2, p. 14.) 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 St. No. 2, p. 14.) 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 St. No. 2, pp. 14-15.) 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 St. No. 2, p. 15.)

Dr. Israel also evaluated whether there is a credible scientific basis that RF fields cause or contribute to insomnia and difficulty sleeping. (PPL St. No. 2, pp. 15-16.) There have been a number of studies on whether exposure to RF fields adversely affects sleep quality. (PPL St. No. 2, p. 16.) None of the several scientific studies referenced by Dr. Israel found any consistent adverse effects on sleep related exposure to RF fields. (PPL St. No. 2, p. 16.) Moreover, Dr. Israel evaluated whether there is a credible scientific basis that RF fields cause or contribute to problems with heart rates. (PPL St. No. 2, p. 17.) Again, the several scientific studies referenced by Dr. Israel found no significant effects on heart rates from RF exposures. (PPL St. No. 2, p. 17.) Thus, there is no reliable scientific basis to conclude that RF fields from the AMI meters being used by PPL Electric cause or contribute to: (1) adverse effects on sleep quality; or (2) problems with heart rates. (PPL St. No. 2, pp. 15-17.)

As a result, the Company 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 12-16.)

Regarding the Complainant's allegation that the ID violates the ADA, the Commission completely lacks jurisdiction to determine whether the Complainant has a disability defined by the ADA and to enforce the ADA's provisions. *See Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602, p. 43 (Order entered May 3, 2018).

Finally, concerning the Complainant's alleged religious beliefs opposing the AMI meter's installation, there is no religious exemption under Act 129 of 2008's mandate for PPL

Electric and other electric distribution companies to install the AMI meters. Moreover, for there to be a deprivation of constitutional 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 be said to be a state actor.”<sup>2</sup> Here, PPL Electric is a utility corporation, not a state actor. *See Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351-53 (1974). Therefore, PPL Electric’s actions, including its installation of the AMI meter, cannot violate the Complainant’s constitutional rights.

Based on the foregoing, the Complainant’s Exception No. 2 should be denied.

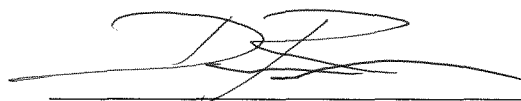
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<sup>2</sup> *Commonwealth v. Corley*, 491 A.2d 829, 832 (Pa. 1985) (emphasis added) (quoting *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 937 (1982)); *see Commonwealth v. Demor*, 942 A.2d 898, 899-900 (Pa. Super. 2008) (applying principles outlined 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).

**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, the Company respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions filed by Michele White and adopt the Initial Decision without modification.

Respectfully submitted,



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