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July 18, 2019

VIA ELECTRONIC FILING

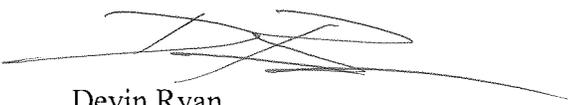
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Nelson Hess v. PPL Electric Utilities Corporation
Docket No. C-2018-3003337

Dear Secretary Chiavetta:

Enclosed please find the Replies of PPL Electric Utilities Corporation to the Exceptions of Nelson Hess for filing in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/dmc
Enclosures

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

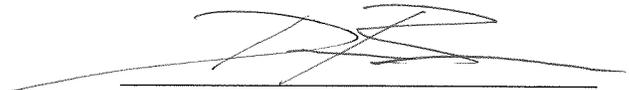
CERTIFICATE OF SERVICE

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 & REGULAR MAIL

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Date: July 18, 2019



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nelson Hess,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3003337
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE
EXCEPTIONS OF NELSON HESS**

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Date: July 18, 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 Nelson Hess (“Complainant”). In the Initial Decision (“ID”), Administrative Law Judge Elizabeth H. Barnes (the “ALJ”) dismissed the Complainant’s Formal Complaint challenging the Company’s planned 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 July 8, 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.¹

II. REPLIES TO EXCEPTIONS

A. REPLIES TO EXCEPTIONS NOS. 1-3 AND 5-8 – 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 failed to meet his burden of proof that installing the new AMI meter would violate Section 1501 of the Public Utility Code. (Exceptions at 2-7.) 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

¹ There is substantial overlap in the Complainant’s Exceptions. Accordingly, PPL Electric responds to the Complainant’s Exceptions by subject matter rather than individually by the number of the Exception. Moreover, given this overlap, an Exception number may be repeated in multiple sections.

cause or contribute to adverse health effects. (Exceptions at 2-7.) The Complainant believes that his own lay testimony and two hearsay exhibits should have been relied on instead of the testimony and exhibits offered by PPL Electric's witnesses, including two expert witnesses. (Exceptions at 2-7.) Furthermore, the Complainant contends that the ALJ should not have relied on the un rebutted evidence about the amount of RF to which he is exposed from using his cell phone and from UHF TV transmissions. (Exceptions at 6.) 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 at 2-7.) Lastly, the Complainant asserts that he has concerns about "cyber security" of the AMI meters involving "hacking and privacy." (Exceptions at 1.) 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, Contribute to, or Exacerbate Any Adverse Health Effects

The Company has offered thorough, credible, and reliable expert testimony and exhibits demonstrating the new AMI meter will not cause, contribute to, or exacerbate any adverse health effects. (PPL St. No. 1, pp. 5-17; PPL Exhibits CD-1 through CD-5; PPL St. No. 2, pp. 7-17; PPL Exhibits MI-1 through MI-3.)

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 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 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.)

The comparison of the level of RF field exposure from AMI meters versus cell phones is especially important because the Complainant regularly uses his cell phone and, as a result, exposes himself to higher levels of RF fields than those that would be produced by the AMI meter. In fact, the cell phone bills provided by the Complainant show that, over a 12-month period, he used his cell phone for 36,481 minutes. (PPL St. No. 1, p. 16.) Based on that amount of cell phone use, and assuming he held his cell phone at his head, the Complainant would have

to stay within 1 meter of the new AMI meter for 7,197 years to get an equivalent amount of RF exposure. (PPL St. No. 1, p. 16.) Even if the cell phone were 1 meter away from his head, the Complainant would need stay within 1 meter of his AMI meter for 18 years to get a level of RF exposure equivalent to the RF exposure he got from using his cell phone. (PPL St. No. 1, p. 16.)

Furthermore, the existing background levels of RF fields at the 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 8 television broadcast towers within a 50-mile radius of the Complainant's location. (PPL St. No. 1, p. 15.) Based on the locations of each tower and their RF power outputs, the constant background levels of RF fields at the Complainant's residence are **3.94 times higher** than the RF signals from the AMI meter. (PPL St. No. 1, p. 15; PPL Exhibit CD-5.) 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 the 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. 9.) 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. 9-10.) Further, Dr. Israel provided examples of well-conducted animal studies on RF fields and cancer. (PPL St. No. 2, p. 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. 11.) 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, p. 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, pp. 11-12.)

In addition, Dr. Israel reviewed the published scientific research on EHS from the perspective of a medical doctor. (PPL St. No. 2, pp. 13-16.) 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, p. 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, p. 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, pp. 14-15.) 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. 15-16.) 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, pp. 15-16.)

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 16-20.)

Despite all of this thorough, credible, and reliable evidence rebutting the Complainant’s allegations, the Complainant avers that he met his burden of proof. However, the Complainant’s testimony and exhibits were properly rejected by the ALJ. As the ALJ noted, the “Complainant

is neither a medical expert nor an engineer,” and all of “[h]is testimony as to the deleterious health effects of an AMI smart meter was refuted by the credible testimony of PPL’s expert witness Mark Israel.” (ID at 17.) Moreover, the ALJ properly gave little or no weight to the Complainant’s two exhibits because PPL Electric objected to them on the grounds of hearsay, and “[n]o corroborative medical evidence was proffered to support Complainant’s testimony.” (ID at 17.) Additionally, those exhibits “are less persuasive than the peer-reviewed studies published in medical and scientific journals relied upon by PPL expert witnesses Mark Israel and Christopher Davis.” (ID at 17.)

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, contribute to, or exacerbate 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 contends that the Company’s expert witnesses, Dr. Israel and Dr. Davis, have offered biased opinions and lack credibility. (Exceptions at 2-7.) He also alleges that Dr. Davis inaccurately asserted that the Complainant places tin foil on his cell phone. (Exceptions at 3, 6-7.) Therefore, the Complainant claims that the ALJ erred in relying on their testimony. (Exceptions at 2-7.)

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 St. No. 2, p. 3.) He has published over 249 medical research studies in leading scientific journals such as the *New England Journal of Medicine*, *Cancer Research* and *Nature*, among others. (PPL St. No. 2, p. 3.)

Moreover, Dr. Israel has written chapters in medical textbooks and is a co-Editor of the textbook *The Molecular Basis of Cancer*. (PPL St. No. 2, pp. 3-4.) 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 St. No. 2, p. 4.) 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 St. No. 2, p. 4.)

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 St. No. 2, p. 5.) 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 St. No. 2, p. 5.) 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 St. No. 2, p. 5.) He also has served on the Board of Scientific Counselors for the NCI. (PPL St. No. 2, p. 5.)

During his work at the NCI, Dr. Israel was awarded two U.S. Public Health Service commendation medals. (PPL St. No. 2, p. 5.) In 1998, he received the Farber Award, which is awarded annually by the American Association of Neurological Surgeons for excellence in

cancer research. (PPL St. No. 2, p. 5.) In 2014, he received the C. Everett Koop Courage Award for the pursuit of evidence-based medicine. (PPL St. No. 2, p. 5.)

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 St. No. 1, pp. 1-2.) He has conducted many scientific studies in these fields and has published 255 studies in peer-reviewed scientific journals. (PPL St. No. 1, p. 2.) 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 St. No. 1, p. 3.) 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 St. No. 1, p. 3.) 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 St. No. 1, p. 4.)

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

Moreover, the Complainant's allegation Dr. Davis incorrectly asserted that the Complainant places tin foil on his phone is directly refuted by the answers to interrogatories attached to the Complainant's own Exceptions. Specifically, in response to Interrogatory 2, he stated that "[t]here is one cell phone that is protected with three different technologies including tin foil on the holder to help block the incoming signal." (Exceptions, Appx., p. 1) (emphasis added). Similarly in response to Interrogatory 3, the Complainant again stated that "[t]here is one cell phone (a Samsung Galaxie [sic] 8+) that is protected (and tested) with three different technologies including tin foil on the holder." (Exceptions, Appx., p. 2) (emphasis added). Therefore, the Complainant's allegations of bias and lack of credibility are entirely unfounded.

3. The ALJ Properly Found that the Complainant Failed to Prove that the New AMI Meter Presents Cybersecurity and Data Privacy Concerns

In his Exceptions, the Complainant also claims that the new AMI meter presents "cyber security issues surrounding hacking and privacy." (Exceptions at 1.) The ALJ correctly rejected the Complainant's argument. (ID at 20-21.)

As explained in the ID, on this issue, the Complainant only presented his lay testimony as well as Complainant's Exhibit 2, an article from eenews.net about cybersecurity. (ID at 20-21.) However, the Complainant admitted that he has no education or work experience in cybersecurity. (Tr. 17.) Further, Complainant's Exhibit 2 was properly given little to no weight

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 Corp. 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); *Hoffman-Lorah v. PPL Elec. Utils. Corp.*, Docket No. C-2018-2644957 (Order entered May 23, 2019).

because it was uncorroborated hearsay. (ID at 17.) Moreover, as conceded by the Complainant, that article contained no reference to meters. (Tr. 15.) As a result, the ALJ properly rejected the Complainant's evidence on the cybersecurity and data privacy issues.

In contrast, the Company presented substantial, thorough, and credible evidence about these issues. As PPL Electric witness Vinciguerra testified, "Cybersecurity was one of the cornerstones of PPL Electric's Smart Meter Plan." (PPL St. No. 4, p. 7.) The Company takes several steps to protect against unauthorized public disclosure or access to the AMI data, which include the use of technologies such as firewalls, encryption, digital signatures, authentication and access controls. (PPL St. No. 4, p. 7.) Data collected within the meters also is protected through proprietary-based applications and five levels of password protection. (PPL St. No. 4, p. 7.) Prior to transmission, the data is highly encrypted utilizing advanced security appliances. (PPL St. No. 4, p. 7.) Once the data reaches the Company's head systems, the data is further protected through means of firewalls and user role functions. (PPL St. No. 4, p. 7.) These user role functions limit the availability of data and functions to only what the user's job requires, and even within these roles, the user is only granted a security key that allows access for that day. (PPL St. No. 4, p. 7.)

Additionally, as the ALJ noted, PPL Electric filed an "AMI Customer Privacy Policy" as part of its Smart Meter Plan proceeding on July 20, 2016. (ID at 21; *see* PPL St. No. 3, p. 6.) This policy generally describes: (1) the data collected by the new AMI meters and network ("AMI Data"); (2) the steps taken by PPL Electric to protect the AMI Data; and (3) the ways in which the Company uses AMI Data. (PPL St. No. 3, p. 6; PPL Exhibit KD-3.) PPL Electric follows all of the practices and procedures outlined in the AMI Customer Privacy Policy on file

with the Commission. (PPL St. No. 3, p. 8.) Therefore, the Complainant's cybersecurity and data privacy concerns have no merit.

Based on the foregoing, the Complainant's Exceptions Nos. 1-3 and 5-8 should be denied.

B. REPLIES TO EXCEPTIONS NOS. 1-2, 5-6, AND 8 – THE COMPLAINANT WAS AFFORDED DUE PROCESS, AND HIS ALLEGATIONS OF UNETHICAL CONDUCT AND BIAS ARE COMPLETELY WITHOUT MERIT

The Complainant argues in his Exceptions that he was not afforded a fair hearing because “the system is totally rigged against the complainant” and that it does not matter “how much evidence is submitted.” (Exceptions at 1, 5.) As alleged support, the Complainant contends that the ALJ, PPL Electric's attorneys, and PPL Electric's witnesses engaged in unethical behavior and colluded with each other. (Exceptions at 1-2, 5-11.) The Complainant even contends that the ALJ and counsel for PPL Electric engaged in “secret communications using facial expressions and head shakes.” (Exceptions at 5, 7.)

The Complainant's baseless allegations of impropriety and the lack of a fair hearing should be rejected. Nothing in the record even remotely suggests that the ALJ or any of PPL Electric's witnesses or attorneys engaged in any unethical conduct. It appears that the Complainant believes that the system is “rigged” simply because the ALJ ruled against him. However, given the sheer lack of credible evidence presented by the Complainant, compared to the substantial, thorough, and credible evidence presented by PPL Electric, the ALJ correctly rejected the Complainant's arguments and ruled that he did not meet his burden of proof. (ID at 12-21.)

Furthermore, the ALJ properly afforded the Complainant due process. “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, the Complainant was provided with notice and an opportunity to be heard on his issues at the May 14, 2019 hearing. Indeed, he had an opportunity to cross-examine the Company’s witnesses, review the written testimony and exhibits served by the Company on April 12, 2019 (well before the evidentiary hearing on May 14, 2019), and offer his evidence in rebuttal. Additionally, as seen in the ID, the ALJ thoroughly reviewed all of the Complainant’s evidence and arguments. (ID at 12-21.) Ultimately, the ALJ weighed all of the evidence before her and correctly found that the Complainant failed to meet his burden of proof. (ID at 21.) Although the Complainant may disagree with the ALJ’s decision, the Complainant unquestionably was afforded a full and fair opportunity to present his case.

For these reasons, the Complainant’s Exceptions Nos. 1-2, 5-6, and 8 should be denied.

C. REPLIES TO EXCEPTIONS NOS. 2, 4, AND 9 – THE ALJ PROPERLY REJECTED THE COMPLAINANT’S UNFOUNDED LEGAL ARGUMENTS

The Complainant’s principal legal argument is that AMI meter installations are not mandatory under Act 129 and that customers must “opt-in” to the meters being installed. (Exceptions at 4.) Therefore, because he refuses to “opt-in” to the installation, the Complainant believes that PPL Electric cannot install the AMI meter. (Exceptions at 4.) Furthermore, the Complainant alleges that PPL Electric’s installation of the AMI meter would be “unconstitutional.” (Exceptions at 4.)

The ALJ properly held that the installation of the new AMI meter is required by law. (ID at 13.) Section 2807(f) of the Public Utility Code prescribes that EDCs, 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, 14.³ 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. In fact, the Commission recently held that PPL Electric must install the new AMI meters for all of its customers. *Hoffman-Lorah v. PPL Electric Utilities Corp.*, Docket No. C-2018-2644957, p. 43 (Order entered May 23, 2019). Similarly, the Commission found in several other cases that Act 129 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) (footnote omitted).

³ *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)).

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.” *Id.*; see *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602, pp. 8-10 (Order entered May 3, 2018); *Povacz v. PECO Energy Co.*, Docket No. C-2015-2475023, p. 93 (Order entered Mar. 28, 2019); *Sunstein Murphy v. PECO Energy Co.*, Docket No. C-2015-2475726, p. 93 (Order entered May 9, 2019); *Randall & Albrecht v. PECO Energy Co.*, Docket No. C-2016-2537666, p. 88 (Order entered May 9, 2019). Although bills have been proposed in the General Assembly to add such an opt-out (see, e.g., House Bill 1564 of 2017-2018 Session), they have not been enacted. Thus, a customer cannot opt-out of the AMI meter installation under Act 129.

Moreover, PPL Electric must comply with the relevant Commission orders directing the Company to deploy the new AMI meters. As mentioned previously, the Commission determined that the Company’s existing PLC meters are not compliant with Act 129 and the Commission’s *Smart Meter Implementation Order*. See *Petition of PPL Electric Utilities Corporation for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123945, p. 24 (Order entered June 24, 2010) (“2010 Smart Meter Order”). Under the Company’s Commission-approved Smart Meter Plan, PPL Electric must replace all of the PLC meters with the RF Mesh meters, which the Commission declared as meeting all of the requirements of Act 129 and the Commission’s *Smart Meter Implementation Order*. See *Petition of PPL Electric Utilities Corp. for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781, p. 24 (Order Entered Sept. 3, 2015) (“2015 Smart Meter Order”). PPL Electric is not permitted to install any other type of meter under its Smart Meter Plan and cannot leave the existing, non-compliant PLC meter in place. (See PPL St. No. 4, p. 6.) Therefore, if the Company does not install the new RF Mesh meter on the

Complainant's residence in accordance with the Commission-approved deployment schedule,⁴ PPL Electric may violate the Commission's *2010 Smart Meter Order*, *2015 Smart Meter Order*, and *Smart Meter Implementation Order*.

In addition, the Complainant's argument that Act 129 is an "opt-in" statute is without merit. It appears that the Complainant is focusing entirely on Section 2807(f)(2)(i), which states that EDCs shall furnish smart meter technology "[u]pon request from a customer that agrees to pay the cost of the smart meter at the time of the request." 66 Pa. C.S. § 2807(f)(2)(i). However, the Complainant fails to recognize that Section 2807(f)(2)(iii) directs EDCs to deploy smart meters "[i]n accordance with a depreciation schedule not to exceed 15 years." *Id.* § 2807(f)(2)(iii). The Commission has correctly interpreted this provision as mandating EDCs to deploy AMI meters system-wide for all of the customers in their service territories. *See Smart Meter Implementation Order*, p. 14. Therefore, the Complainant's argument that Act 129 is an "opt-in" statute should be completely rejected.

Finally, PPL Electric's installation of the new AMI meter would not be "unconstitutional," as alleged by the Complainant. 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 said to be a state actor." *Commonwealth v. Corley*, 491 A.2d 829, 832 (Pa. 1985) (emphasis added) (quoting *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 937 (1982));

⁴ In the *Smart Meter Implementation Order*, the Commission encouraged EDCs "to expedite the deployment process if it will provide increased customer benefits in a cost effective manner." *Smart Meter Implementation Order*, p. 14. The Commission also recognized that system-wide deployment of smart meters would involve "more than just the meter hardware attached to the customer's premises." *Id.*, p. 6. EDCs would need time to select the technology, train personnel, and deploy the entire AMI network, including any associated hardware and software. *Id.* For PPL Electric, the Company's Commission-approved Smart Meter Plan states that the smart meters are to be deployed system-wide from 2017 through 2019 with additional actions beyond 2019 to get the full network up and running. (PPL Electric Exhibit SL-1, pp. 3, 32; PPL Electric Statement No. 4, p. 6.) Notably, in approving the Company's Smart Meter Plan, the Commission found that the deployment of PPL Electric's new RF Mesh meters "should be done sooner rather than later." *2015 Smart Meter Order*, p. 36.

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).

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 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 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*, 900 F.3d 521, 527-29 (7th Cir. 2018). Thus, PPL Electric cannot, by installing the new AMI meter, violate the Complainants’ constitutional rights.⁵

For these reasons, PPL Electric must install the new RF Mesh meter on the Complainant’s residence, and the Complainant’s legal arguments completely lack merit.

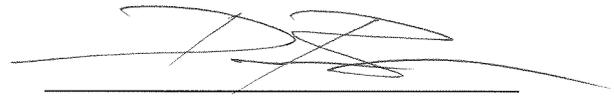
Based on the foregoing, the Complainant’s Exceptions Nos. 2, 4, and 9 should be denied.

⁵ Additionally, even if the Complainant were challenging the constitutionality of Section 2807(f)’s mandate for EDCs to install new AMI meters, such a claim would be without merit. Indeed, the Complainant fails to cite any provision of the Pennsylvania Constitution or United States Constitution that he believes is violated by the mandatory installation of the AMI meters. Further, in enacting statutes, it is presumed that the General Assembly did “not intend to violate the Constitution of the United States or of this Commonwealth.” 1 Pa. C.S. § 1922.

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 Nelson Hess and adopt the Initial Decision without modification.

Respectfully submitted,



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Date: July 18, 2019

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