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

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: Dorene Schutz v. PPL Electric Utilities Corporation
Docket No. C-2018-3005659

Dear Secretary Chiavetta:

Enclosed please find the Replies of PPL Electric Utilities Corporation to the Exceptions of Dorene Schutz 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

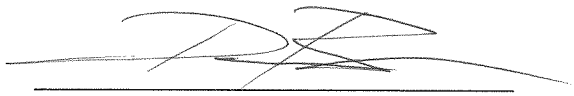
CERTIFICATE OF SERVICE

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 FIRST CLASS MAIL

Dorene Schutz
218 Bowman Street
Wilkes Barre, PA 18702

Date: July 18, 2019



Devin T. Ryan

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Dorene Schutz,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3005659
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE EXCEPTIONS OF DORENE SCHUTZ

Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID # 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Phone: 610-774-2599
Fax: 610-774-4102
E-mail: kklock@pplweb.com
mjshafer@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 (ID # 326488)
Watson & Renner
1901 Pennsylvania Avenue, NW
Suite 1005 - ENS
Washington, DC 20006
Phone: 202-737-6302
E-mail: crenner@w-r.com

Date: July 18, 2019

Attorneys for PPL Electric Utilities Corporation

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 Dorene Schutz ("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 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 June 28, 2019, the Complainant filed Exceptions to the ID.[1]

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. REPLY TO EXCEPTION NO. 1 – 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

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, p. 3.) 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] Per the Commission's Secretarial Letter serving the ID, Exceptions were due by July 8, 2019, *i.e.*, within 20 days of the date of the Secretarial Letter. Replies to Exceptions then were due by July 18, 2019, *i.e.*, 10 days within the due date for Exceptions. Therefore, PPL Electric's Replies to Exceptions are timely filed.

cause or contribute to adverse health effects because "[t]he National Institute of Environmental Health science completed this government survey" that "shows how 900 megahertz and 1900 are carcinogenic" and "the industry has no study" to support the safety of the 900 megahertz frequency. (Exceptions, p. 3.) The Complainant's argument should be rejected for several reasons.

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 12-17.) 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 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 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 11 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 **74.7 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. 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, p. 10.) 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, pp. 12-13.) This is consistent with a recommendation from the WHO. (PPL St. No. 2, p. 12.) 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.)

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 12-17.)

In contrast, the Complainant presented her own unsupported lay opinion that the new AMI meter would cause, contribute to, or exacerbate adverse health effects. (Tr. 8-16.) As alleged support, the Complainant offered multiple hearsay documents and copies of various provisions of the U.S. Constitution and Title 18 of the United States Code. (Tr. 8-16; Complainant's Exhibits A through H.) In her Exceptions, the Complainant contends that her Exhibit H, which is the "National Institute of Environmental Health [S]cience" document she references in the Exceptions, demonstrates that the new AMI meter will cause adverse health effects. (Exceptions at 3.)

The ALJ properly rejected the Complainant's evidence, including Complainant's Exhibit H. As the ALJ noted, the "Complainant is neither a medical expert nor an engineer," and all of "[h]er 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 14.) Moreover, the ALJ properly gave little or no weight to the Complainant's hearsay exhibits, including Complainant's Exhibit H, 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 13.) Furthermore, Dr. Davis stated that Complainant's Exhibit H is not a published paper in a scientific journal and does not include the actual studies that were performed by the National

Toxicology Program ("NTP"). (Tr. 29-30.) Moreover, Dr. Davis explained that the document should not be relied on in this proceeding because the RF exposure from standing one meter away from the new AMI meter is "approximately a thousand times below the lowest exposure level used in the NTP study." (Tr. 32.) Dr. Israel testified that Complainant's Exhibit H is not the NTP study and does not provide the actual scientific data from the NTP studies. (Tr. 38-39.) Dr. Israel – who is a medical doctor and cancer researcher – has reviewed the NTP studies on RF fields and animals, including the actual data reported in the studies. (Tr. 39-40.) Based on his expertise in medicine and cancer research, he testified that the scientific data in the NTP studies do not provide a reliable scientific basis to conclude that RF fields from smart meters cause any adverse health effects, including cancer. (Tr. 39-40.) Dr. Israel's expert opinion is consistent with the body of scientific research showing no consistent and reproducible effects from RF fields on cancer or other adverse health effects. (PPL St. No. 2, pp. 9-10.) Thus, the ALJ correctly found that the Complainant failed to meet her burden of proof.

Based on the foregoing, the Complainant's Exception No. 1 should be denied.

B. REPLY TO EXCEPTION NO. 2 – PPL ELECTRIC'S WITNESS EXPLICITLY AND ACCURATELY STATED THAT THE NEW AMI METER USES A 900 MEGAHERTZ FREQUENCY

The Complainant asserts in her Exception No. 2 that PPL Electric witness Donald Vinciguerra committed perjury by stating in his written testimony that PPL Electric's AMI meters use "a 900 megahertz ("MHz") frequency" to transmit the electric usage data to the Company's head end system. (Exceptions at 4-5.) Confusingly, the Complainant asserts that this statement conflicts with an "FCC document," which allegedly states that "the Smart Grid advanced metering infrastructure . . . [m]achine to machine communication all use 900 megahertz." (Exceptions at 4.) The Complainant's Exception should be soundly rejected.

First, it is completely unclear what "FCC document" the Complainant is referencing. There is no FCC document included in her exhibits or the Company's exhibits. Moreover, even if she provided sufficient information to identify this document, it well-established that parties cannot introduce evidence for the first time at the exceptions stage.[2] "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). Therefore, if the Complainant is permitted to rely upon this unidentified FCC document, PPL Electric will be denied due process. Thus, the Commission should reject the Complainant's attempt to reference or rely upon this unknown extra-record evidence in her Exceptions.

Second, there is no conflict between PPL Electric witness Vinciguerra's testimony and the statements allegedly contained in this "FCC document." According to the Complainant, this document allegedly states that AMI technology uses 900 MHz frequency to transmit data. (Exceptions at 4.) Likewise, Mr. Vinciguerra specific testified that the Company's AMI meters use a 900 MHz frequency as well. (PPL St. No. 4, p. 5.) Therefore, no discrepancy exists between these two statements.

For these reasons, the Complainant's Exception No. 2 should be denied.

[2] *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).

C. REPLY TO EXCEPTION NO. 3 – ACT 129 IS NOT PREEMPTED BY FEDERAL LAW, AND THE COMMISSION LACKS SUBJECT MATTER JURISDICTION TO INTERPRET AND ENFORCE 18 U.S.C. §§ 241 AND 242

The Complainant also claims that she should be permitted to opt-out of the AMI meter installation because "[f]ederal law does not make Smart meters mandatory." (Exceptions at 6.) Further, she alleges that the AMI meters violate 18 U.S.C. §§ 241 and 242. (Exceptions at 6.) The Complainant's arguments should be rejected.

The Commonwealth Court previously has found that federal law does not preempt Act 129 of 2008 ("Act 129"). Specifically, in *Romeo*, the Court held that the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the Energy Policy Act of 2005 "do not preempt the smart meter provisions of the Code or of Act 129." *Romeo v. Pa. PUC*, 154 A.3d 422, 428 (Pa. Cmwlth. 2017). As support, the Court reasoned that the "federal standards are a supplement to the state standards, and the state is only required to consider the federal standards." *Id.* Therefore, "the federal and state standards are not and cannot be in conflict." *Id.* Thus, consistent with the Commonwealth Court's finding in *Romeo*, the Commission should reject the Complainant's argument that Act 129 is preempted by federal law.

In addition, the Commission should disregard the alleged violations of 18 U.S.C. §§ 241 and 242 entirely. As a creature of statute, the PUC "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). Nothing in the Pennsylvania Public Utility Code grants the Commission the ability to interpret and enforce Title 18 of the U.S. Code. Those are federal criminal statutes, which the Commission has no subject matter jurisdiction to interpret and enforce. *See Adams v. United States*, 82 Fed. Cl. 558, 560 (Fed. Cl.

2008) (finding that the U.S. Court of Federal Claims "does not have jurisdiction over criminal proceedings, including those arising under Sections 241 and 242" of Title 18 of the U.S. Code).

Based on the foregoing, the Complainant's Exception No. 3 should be denied.

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 Dorene Schutz and adopt the Initial Decision without modification.

Respectfully submitted,

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 (ID # 326488)
Watson & Renner
1901 Pennsylvania Avenue, NW
Suite 1005 - ENS
Washington, DC 20006
Phone: 202-737-6302
E-mail: crenner@w-r.com

Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID # 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Phone: 610-774-2599
Fax: 610-774-4102
E-mail: kklock@pplweb.com
mjshafer@pplweb.com

Date: July 18, 2019

Attorneys for PPL Electric Utilities Corporation