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Devin Ryan

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File #: 167945

July 16, 2019

VIA HAND DELIVERY

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: Lloyd and Susan Horst v. PPL Electric Utilities Corporation
Docket No. C-2018-3006774**

Dear Secretary Chiavetta:

Enclosed for filing is the Motion of PPL Electric Utilities Corporation ("PPL Electric") to Compel Responses to Discovery Propounded on Lloyd and Susan Horst ("Complainants") – Set I in the above-referenced proceeding.

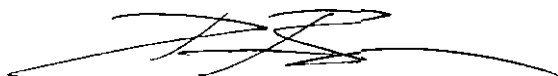
PPL Electric is filing CONFIDENTIAL and NON-CONFIDENTIAL versions of its Motion because the Complainants' marked the entirety of their discovery responses as CONFIDENTIAL. Although PPL Electric disputes that the information provided in those discovery responses is actually CONFIDENTIAL, the Company is treating them as such out of an abundance of caution. By no means should this treatment be considered a waiver as to the Company's argument that the information provided is not actually CONFIDENTIAL.

Accordingly, the CONFIDENTIAL version of the Motion is being provided in a sealed envelope stamped CONFIDENTIAL and should not be placed in a public folder.

Copies will be provided as indicated on the Certificate of Service.

Rosemary Chiavetta, Secretary
July 16, 2019
Page 2

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'DR', with a long horizontal flourish extending to the left.

Devin Ryan

DTR/dmc
Enclosure

cc: Honorable Elizabeth Barnes (*w/enclosure*)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

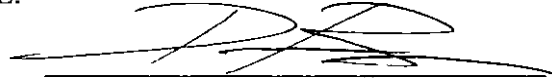
Lloyd and Susan Horst,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2018-3006774
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.342(g)(1), YOU MAY FILE A REPLY TO THE ENCLOSED MOTION TO COMPEL WITHIN FIVE (5) DAYS AFTER THE DATE OF SERVICE. YOUR REPLY SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR REPLY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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Date: July 16, 2019

Attorneys for PPL Electric Utilities Corporation

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Lloyd and Susan Horst,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2018-3006774
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

MOTION OF PPL ELECTRIC UTILITIES CORPORATION TO
COMPEL RESPONSES TO
DISCOVERY PROPOUNDED ON LLOYD AND SUSAN HORST – SET I

NON-CONFIDENTIAL VERSION

TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

Pursuant to 52 Pa. Code §§ 5.342(g) and 5.349(d), PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files this Motion to Compel¹ Responses to Discovery Propounded on Lloyd and Susan Horst (“Complainants”) – Set I. In support of its Motion, PPL Electric states as follows:

I. INTRODUCTION

1. On May 3, 2019, PPL Electric served Interrogatories and Requests for Production of Documents on the Complainants – Set I (“PPL to Complainants Set I”) via email and certified mail. A true and correct copy of PPL to Complainants Set I is attached hereto and marked as

Appendix A.

¹ PPL Electric is filing Confidential and Non-Confidential versions of its Motion because the Complainants’ marked the entirety of their discovery responses as Confidential. Although PPL Electric disputes that the information provided in those discovery responses is actually Confidential, the Company is treating the discovery responses as Confidential out of an abundance of caution. By no means should this treatment be considered a waiver as to the Company’s argument that the information provided is not actually Confidential.

2. Pursuant to the Commission's regulations, objections to PPL to Complainants Set I were due on or before May 13, 2019, and responses were due on or before May 23, 2019.

3. The Complainants never served any objections to PPL to Complainants Set I.

4. On May 21, 2019, the Complainants served their "CONFIDENTIAL"² responses to PPL to Complainants Set I. However, the Complainants refused to provide the information and materials requested in PPL to Complainants Set I, Questions 2, 3, and 4. A true and correct copy of the Complainants' "CONFIDENTIAL" responses PPL to Complainants Set I is attached hereto and marked as **CONFIDENTIAL Appendix B**.

5. On June 10, 2019, counsel for PPL Electric attempted to contact the Complainants via telephone about trying to resolve the discovery issues informally before filing a Motion to Compel. The Complainants did not answer, and there was no option to leave a voicemail.

6. To date, the Complainants have never sent complete responses to PPL to Complainants Set I, Questions 2, 3, and 4.

II. MOTION TO COMPEL

7. PPL Electric requests that Administrative Law Judge Elizabeth H. Barnes ("ALJ") compel responses to PPL to Complainants Set I, Questions 2, 3, and 4.

8. Under 52 Pa. Code § 5.321(c), a party is entitled to obtain discovery of any matter not privileged that is relevant to the pending proceeding, or any matter that is reasonably calculated to lead to the discovery of admissible evidence. Discovery is permitted regardless of whether the information sought "relates to the claim or defense of the party seeking discovery or to the claim or defense of another party." *Id.*

² As noted previously, PPL Electric disputes that the information provided in response to PPL to Complainants Set I is actually confidential, but the Company is treating it as confidential for the purposes of this Motion out of an abundance of caution. **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL]

9. Objections to interrogatories and requests for production of documents must be served within 10 days of the date the discovery was served. 52 Pa. Code §§ 5.342(e), 5.349(d). Objecting parties remain under an obligation to provide timely answers to interrogatories or subparts of interrogatories to which they did not object. *Id.* § 5.342(f). Further, objections must be contained in a document separate from an answer. *Id.* §§ 5.342(c), 5.349(d).³

10. Answers to written interrogatories must “[a]nswer each interrogatory fully and completely unless an objection is made.” *Id.* § 5.342(a)(4). Answers must be served within 20 days after service of the interrogatories. *Id.* § 5.342(d).

11. Similarly, a party shall serve a response to a request for documents within 20 days after the service of the request. *Id.* § 5.349(d). The requesting party may move to compel a response to a request for documents with respect to a failure to respond to the request. *See id.*

12. As explained herein, the Complainants have failed to comply with the Commission’s discovery rules by failing to provide full and complete responses to PPL to Complainants Set I, Questions 2, 3, and 4 and produce the documents sought by these requests.

13. For the reasons stated in more detail below, the ALJ should direct the Complainants to answer fully PPL to Complainants Set I, Questions 2, 3, and 4. Moreover, should the ALJ grant PPL Electric’s Motion to Compel and the Complainants fail to timely provide full and complete responses to Complainants Set I, Questions 2, 3, and 4, PPL Electric intends to file a Motion for Sanctions pursuant to 52 Pa. Code §§ 5.371(a) and 5.372(a).

A. PPL TO COMPLAINANTS SET I, QUESTION 2

14. PPL to Complainant-I-2 requests the following:

Please identify all wireless phones, cellphones, microwaves, wireless routers, wifi networks, tablets, computers, Bluetooth

³ The Complainants did not serve objections to discovery. Therefore, Complainants’ failure to provide full and complete responses to discovery requests operate, in effect, as untimely objections.

speakers, wireless security systems, smart speakers (e.g., Amazon Echo), garage door openers, baby monitors, and walkie talkies that are contained in or used in the house.

15. The Complainant's response to PPL to Complainant-I-2 states:

[BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

16. As explained above, Section 5.342(a)(4) requires a party to fully and completely answer an interrogatory. 52 Pa. Code § 5.342(a)(4). In addition, a party has a duty to amend its prior responses to discovery requests when the information contained therein is incomplete. *Id.* § 5.332(2).

17. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

18. The information requested about Complainants' exposure to other devices that emit radio frequency ("RF") fields is highly relevant to the issues raised in the case.

19. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

20. As the testimony of PPL Electric's expert witness on RF exposures – Dr. Christopher Davis – will demonstrate, however, the RF exposure received from use of a cell phone and other devices is far higher than from an AMI meter.

21. PPL Electric is entitled to show how the RF exposures from the Complainants' devices and appliances compare to those from the AMI meter.

22. For these reasons, the ALJ should direct the Complainants to answer fully PPL to Complainants Set I, Question 2.

B. PPL TO COMPLAINANTS SET I, QUESTION 3

23. PPL to Complainant-I-3 requests the following:

Please state whether you or any member of your household uses a cell phone. If so, please provide the make and model of each cell phone and, for each phone identified, provide 12 months of phone bills or other records of actual cell phone usage.

24. The Complainant's response to PPL to Complainant-I-3 states:

[BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

25. As explained above, Section 5.342(a)(4) requires a party to fully and completely answer an interrogatory. 52 Pa. Code § 5.342(a)(4). In addition, a party has a duty to amend its prior responses to discovery requests when the information contained therein is incomplete. *Id.* § 5.332(2).

26. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

27. The information requested about Complainants' cell phone use is highly relevant to the issues raised in this case.

28. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

29. As the testimony of PPL Electric's expert witness on RF exposures – Dr. Christopher Davis – will demonstrate, however, the RF exposure received from use of a cell

phone (or even standing within 30 feet of another person using a cell phone) is far higher than from an AMI meter.

30. PPL Electric is entitled to: (1) show how the RF exposures from the Complainants' phone use compare to those from the AMI meter; and (2) discover the billing records needed to quantify the amount of time that the Complainants choose to use their phones.

31. Based on the foregoing, the ALJ should direct the Complainants to answer fully PPL to Complainants Set I, Question 3.

C. PPL TO COMPLAINANTS SET I, QUESTION 4

32. PPL to Complainant-I-4 requests the following:

- (a) Please state every health condition you claim was caused by a smart meter or will be caused or worsened by the installation of PPL Electric's new smart meter.
- (b) Please provide the date that every health condition identified in subpart (a) began.
- (c) Please provide copies of all your medical records of every health condition identified in subpart (a).
- (d) For each alleged health condition that you do not have medical records for in response to subpart (c), please state whether such condition was diagnosed by a medical professional. If so, please provide the name, address, and telephone number of the medical professional and the date of the diagnosis.
- (e) For each of the alleged health conditions identified in subpart (a), please state whether you have been prescribed any therapy or treatment for the condition by a medical professional. If so, please identify the therapy or treatment, provide the name, address, and telephone number of the prescribing medical professional, and provide the date the therapy or treatment was prescribed.

33. The Complainant's response to the question states:

[BEGIN CONFIDENTIAL]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[END CONFIDENTIAL]

34. As explained above, Section 5.342(a)(4) requires a party to fully and completely answer an interrogatory. 52 Pa. Code § 5.342(a)(4). In addition, a party has a duty to amend its prior responses to discovery requests when the information contained therein is incomplete. *Id.* § 5.332(2).

35. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

■ [REDACTED]

■ [END CONFIDENTIAL]

37. The Complainants should be directed to provide a full and complete response to this interrogatory.

38. Section 5.365(c)(4) of the Commission's regulations states:

Prior to the issuance of a protective order, a party may not refuse to provide information which the party reasonably believes to be proprietary to a party who agrees to treat the information as if it were covered by a protective order until the presiding officer or the Commission issues the order or determines that issuance of the order would not be appropriate. The party claiming the privilege shall file a petition for protective order under subsection (a) within 14 days of the date the request for information was received.

52 Pa. Code § 5.365(c)(4).

39. Here, concurrent with the filing of the instant Motion, PPL Electric is filing a Motion for Protective Order, which would protect the Complainants' medical records and information from unauthorized public disclosure.

40. PPL Electric hereby agrees to treat such information as confidential as though it were governed by the terms of a protective order. Thus, under Section 5.365(c)(4), the Complainants must provide this information to the Company.

41. For these reasons, the ALJ should direct the Complainants to answer fully PPL to Complainants Set I, Question 4.

III. NOTICE OF INTENT TO SEEK SANCTIONS

42. Upon the motion of a party, the presiding officer may make an appropriate order for sanctions if a party fails to answer or otherwise respond to a discovery request or refuses to obey an order of the presiding officer respecting discovery. *See* 52 Pa. Code § 5.371(a).

43. In ruling upon a motion for sanctions, the presiding officer may, among other things, issue: (1) “[a]n order that the matters regarding which the questions were asked, the character or description of the thing or land, the contents of the paper, or other designated fact shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order”; (2) [a]n order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony”; and (3) “[a]n order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, or entering a judgment against the disobedient party or individual advising the disobedience.” *Id.* § 5.372(a)(1)-(3).

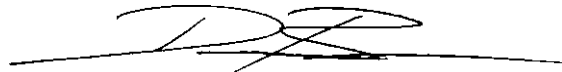
44. Therefore, to the extent that this Motion is granted and the Complainants fail to answer fully PPL to Complainants Set I, or otherwise comply with the ALJ's order, PPL Electric

intends to file an appropriate Motion for Sanctions pursuant to 52 Pa. Code §§ 5.371(a) and 5.372(a).

IV. CONCLUSION

For the reasons set forth above, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge Elizabeth H. Barnes grant this Motion to Compel Responses to Discovery and direct Lloyd and Susan Horst to answer fully PPL to Complainants Set I, as described above within three (3) days from the date of the order.

Respectfully submitted,



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Michael J. Shafer (ID # 205681)
PPL Services Corporation
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Allentown, PA 18101
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Garrett P. Lent (ID # 321566)
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Date: July 16, 2019

Attorneys for PPL Electric Utilities Corporation

APPENDIX A

Interrogatories and Requests for Production of Documents Propounded by PPL Electric Utilities Corporation on Lloyd and Susan Horst – Set I

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Devin Ryan

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

May 3, 2019

VIA CERTIFIED MAIL (7017 1450 0002 3778 1007)
VIA E-MAIL

Lloyd and Susan Horst
2151 Thoroughbred Lane
Lancaster, PA 17601

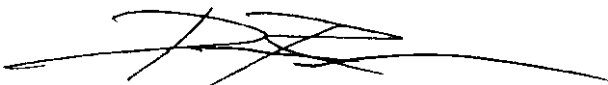
Re: Lloyd and Susan Horst v. PPL Electric Utilities Corporation
Docket No. C-2018-3006774

Dear Mr. & Mrs. Horst:

Enclosed are the Interrogatories and Requests for Production of Documents Propounded by PPL Electric Utilities Corporation on Lloyd and Susan Horst – Set I in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Please provide answers to the enclosed discovery within twenty (20) days of the date of service, pursuant to 52 Pa. Code § 5.342.

Sincerely,



Devin Ryan

DTR/jpf
Enclosures

cc: Rosemary Chiavetta, Secretary (*Letter & Certificate of Service Only*)
Certificate of Service

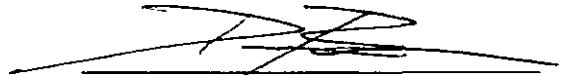
CERTIFICATE OF SERVICE

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 & CERTIFIED MAIL

Lloyd and Susan Horst
2151 Thoroughbred Lane
Lancaster, PA 17601
E-mail:hjer2911@comcast.net

Date: May 3, 2019



Devin T. Ryan

4. To “identify” a business entity means to state the full name of such business, the form of the business, and its location or address.

5. To “identify” a “document” means to provide all of the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- a. The title or other means of identification of each such document;
- b. The date of each such document;
- c. The author, preparer or signer of each such document; and
- d. A description of the subject matter of such document sufficient to permit an understanding of its contents and importance to the testimony or position being examined and the present or last known location of the document. The specific nature of the document should also be stated (*e.g.*, letter, business record, memorandum, computer print-out, etc.).

In lieu of “identifying” any document, it shall be deemed a sufficient compliance with these discovery requests to attach a copy of each such document to the answers hereto and reference said document in the particular interrogatory to which the document is responsive.

6. “Document” means the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notarization, indication of copies sent or received, or otherwise), including without limitation, any paper, book, account, photograph, blueprint, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcript, hearing, meeting, study, notation, working paper, summary, intra-office communication, diary, chart, minutes, index sheet, computer software, computer-generated records or files, however stored, check, check stub, delivery ticket, bill of lading, invoice, record or recording or summary of any telephone or other conversation, or of any interview or of any conference, or

any other written, recorded, transcribed, punched, taped, filmed, or graphic matter of which the Responding Party has or has had possession, custody or control, or of which the Responding Party has knowledge.

7. “Communication” means any manner or form of information or message transmission, however produced or reproduced, whether as a document as herein defined, or orally or otherwise, which is made, distributed, or circulated between or among persons, or data storage or processing units.

8. “Date” means the exact day, month, and year, if ascertainable, or if not, the best approximation thereof.

9. Items referred to in the singular include those in the plural, and items referred to in the plural include those in the singular.

10. Items referred to in the masculine include those in the feminine, and items referred to in the feminine include those in the masculine.

11. The answers provided to these discovery requests should first restate the question asked and identify the person(s) supplying the information.

12. In answering these discovery requests, the Responding Party is requested to furnish all information that is available to the Responding Party, including information in the possession of the Responding Party’s attorneys, agents, consultants, or investigators, and not merely such information of the Responding Party’s own knowledge. If any of the discovery requests cannot be answered in full after exercising due diligence to secure the requested information, please so state and answer to the extent possible, specifying the Responding Party’s inability to answer the remainder, and stating whatever information the Responding

Party has concerning the unanswered portions. If the Responding Party's answer is qualified in any particular, please set forth the details of such qualification.

13. If the Responding Party objects to providing any document requested on any ground, identify such document by describing it as set forth in Instruction 5 and state the basis of the objection.

14. If the Responding Party objects to part of a discovery request and refuses to answer that part, state the Responding Party's objection and answer the remaining portion of that discovery request. If the Responding Party objects to the scope or time period of a discovery request and refuses to answer for that scope or time period, state the Responding Party's objection and answer the discovery request for the scope or time period that the Responding Party believes is appropriate.

15. If, in connection with a discovery request, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorneys' work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

16. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and (c) the basis on which the privilege or other protection from disclosure is claimed.

17. As set forth in 52 Pa. Code § 5.342(g), these discovery requests are continuing, and the Responding Party is obliged to change, supplement, and correct all answers given to conform to new or changing information.

18. "Formal Complaint" means the Formal Complaint filed by the Complainant at Docket No. C-2018-3006774.

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED ON
LLOYD & SUSAN HORST – SET I**

PPL to Complainant-I-1

Re: Formal Complaint.

- (a) Please explain in detail the reasons why you are challenging the Company's installation of the new smart meter.
- (b) Please describe in detail all health concerns, if any, raised by the Company's new smart meter, state the bases for such claims, and provide all documents relied upon by you in your response.
- (c) Please describe in detail all safety concerns, if any, raised by the Company's new smart meter, state the bases for such claims, and provide all documents relied upon by you in your response.
- (d) Please describe in detail all privacy concerns, if any, raised by the Company's new smart meter, state the bases for such claims, and provide all documents relied upon by you in your response.
- (e) Please describe in detail all reasons you believe the Company's new smart meter violates the law.

PPL to Complainant-I-2

Please identify all wireless phones, cellphones, microwaves, wireless routers, wifi networks, tablets, computers, Bluetooth speakers, wireless security systems, smart speakers (*e.g.*, Amazon Echo), garage door openers, baby monitors, and walkie talkies that are contained in or used in the house.

PPL to Complainant-I-3

Please state whether you or any member of your household uses a cell phone. If so, please provide the make and model of each cell phone and, for each phone identified, provide 12 months of phone bills or other records of actual cell phone usage.

PPL to Complainant-I-4

- (a) Please state every health condition you claim was caused by a smart meter or will be caused or worsened by the installation of PPL Electric's new smart meter.
- (b) Please provide the date that every health condition identified in subpart (a) began.

- (c) Please provide copies of all your medical records of every health condition identified in subpart (a).
- (d) For each alleged health condition that you do not have medical records for in response to subpart (c), please state whether such condition was diagnosed by a medical professional. If so, please provide the name, address, and telephone number of the medical professional and the date of the diagnosis.
- (e) For each of the alleged health conditions identified in subpart (a), please state whether you have been prescribed any therapy or treatment for the condition by a medical professional. If so, please identify the therapy or treatment, provide the name, address, and telephone number of the prescribing medical professional, and provide the date the therapy or treatment was prescribed.

PPL to Complainant-I-5

Please identify each person you plan to call as a fact witness in this proceeding. For each person, please:

- (a) Provide the person's name, home and business address, background, and qualifications;
- (b) Explain in detail the subject matter(s) on which the witness is expected to testify; and
- (c) Provide the source(s) of information relied upon or referenced by the witness.

PPL to Complainant-I-6

Please identify each person you plan to call as an expert witness in this proceeding. For each person, please:

- (a) Provide the person's name, home and business address, background, and qualifications;
- (b) Explain in detail the subject matter(s) on which the witness is expected to testify;
- (c) Provide the source(s) of information relied upon or referenced by the witness; and
- (d) Provide a copy of the expert witness's current curriculum vitae.

PPL to Complainant-I-7

Please provide copies of all exhibits you intend to present or utilize at the evidentiary hearing in this proceeding. For each exhibit to be used as part of your direct case, please identify the witness who will be sponsoring the exhibit.

CONFIDENTIAL

APPENDIX B

Lloyd and Susan Horst's Answers to PPL Electric Utilities Corporation's Interrogatories and Requests for Production of Documents – Set I

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