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August 13, 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: Mary Toleno v. PPL Electric Utilities Corporation
Docket No. C-2019-3007821

Dear Secretary Chiavetta:

Enclosed for filing is PPL Electric Utilities Corporation's Motion to Compel in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Sincerely,

Devin Ryan

DTR/kl
Enclosures

cc: Honorable Elizabeth Barnes
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

Mary Toleno
218 Bird Lane
Kunkletown, PA 18058
E-Mail: games1@nym.hush.com

Date: August 13, 2019



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mary Toleno,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2019-3007821
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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: August 13, 2019

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mary Toleno,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2019-3007821
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**MOTION OF PPL ELECTRIC UTILITIES CORPORATION TO
COMPEL RESPONSES TO
DISCOVERY PROPOUNDED ON MARY TOLENO – SET I**

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 Compel Responses to Discovery Propounded on Mary Toleno (“Complainant”) – Set I. In support of its Motion, PPL Electric states as follows:

I. INTRODUCTION

1. On June 26, 2019, PPL Electric served Interrogatories and Requests for Production of Documents on the Complainant – Set I (“PPL to Complainant Set I”) via email and certified mail. A true and correct copy of PPL to Complainant Set I is attached hereto and marked as **Appendix A**.

2. Pursuant to the Commission’s regulations, objections to PPL to Complainant Set I were due on or before July 9, 2019, and responses were due on or before July 19, 2019.

3. The Complainant never served any objections or answers to PPL to Complainant Set I.

4. Pursuant to the Prehearing Order dated August 2, 2019, the Complainant is required to serve any statements, reports, and direct testimony of any expert witness she intends to call on or before May 3, 2019.

5. The Complainant has not served any statements, reports, and direct testimony of any expert witness on PPL Electric to date.

6. The Company is prepared to serve its direct testimony and exhibits in this case on September 16, 2019, as required by the Prehearing Order.

7. On August 9, 2019, counsel for PPL Electric sent an email to the Complainant about, among other things, the status of the overdue discovery responses and trying to resolve the discovery dispute informally.

8. As of filing this Motion, the Complainant has not responded to the Company's email about the overdue discovery responses.

9. To date, no formal, complete responses to PPL to Complainant Set I have been received.

II. MOTION TO COMPEL

10. PPL Electric respectfully requests that the Administrative Law Judge Elizabeth H. Barnes (the "ALJ") direct the Complainant to answer fully all of the interrogatories set forth in PPL to Complainant Set I.

11. 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.*

12. Answers to interrogatories are due within 20 days of the service date. 52 Pa. Code § 5.342(d).

13. Here, PPL Electric served its first set of interrogatories on June 26, 2019. Consequently, answers to PPL to Complainant Set I were due on or before July 19, 2019. Therefore, the responses are now well past due.

14. Further, the Complainant never objected to any of the questions in PPL to Complainant Set I.

15. In addition, the interrogatories propounded by PPL Electric are highly relevant to the issues to be decided in this case, including any claim that the new automated meter infrastructure (“AMI”) meter will cause, contribute to, or exacerbate adverse health effects.

16. For example, in its interrogatories, PPL Electric requests information about the Complainant’s cell phone usage as well as information about any devices that emit radio frequency (“RF”) fields that are contained in or used in the Complainant’s house.

17. The information requested about Complainant’s exposure to other devices that emit RF fields is highly relevant to the issues raised in the case.

18. As the testimony of PPL Electric’s expert witness on RF exposures – Dr. Christopher Davis – will demonstrate, however, the RF exposures received from use of a cell phone (or even standing within 30 feet of another person using a cell phone) and other devices are far higher than from an AMI meter.

19. PPL Electric is entitled to show how the RF exposures from the Complainant’s devices and appliances, including any cell phones, compare to those from the AMI meter.

20. Moreover, the evidentiary hearing is currently scheduled for September 24, 2019, and all exhibits and testimony must be sent to the ALJ no later than September 20, 2019.

21. Therefore, PPL Electric is filing this Motion to Compel to try to receive answers to the discovery in sufficient time before the evidentiary hearing.

22. In addition, on September 16, 2019, PPL Electric will be serving the statements, reports, written testimony, and exhibits it intends to present at the hearing.

23. PPL Electric reserves the right to supplement or revise any of its exhibits, reports, and statements, to the extent that the Complainant serves any of these discovery responses after the Company submits its statements, reports, written testimony, and exhibits.

24. For these reasons, PPL Electric respectfully requests that the ALJ grant its Motion to Compel Responses to Discovery.

III. SANCTIONS

25. 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).

26. 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).

27. If the Complainant fails to provide full and complete responses to PPL Electric’s discovery requests in sufficient time before the September 24, 2019 hearing, PPL Electric will be deprived of a reasonable opportunity to prepare for the hearing and respond to the Complainant’s claims.

28. Accordingly, the Company respectfully requests that if the Complainant fails to produce the information and documents related to any of her claims by September 10, 2019, then the Complainant should be barred from litigating the corresponding claim(s).

29. For example, if the Complainant fails to produce her medical records to verify the existence of any claimed medical conditions or issues, then the Complainant would be precluded from litigating claims that the installation of PPL Electric’s AMI meter would cause, contribute to, or exacerbate adverse health effects.

30. Similarly, if the Complainant fails to produce information about her current exposure to RF fields as requested in Questions 2 and 3, including but not limited to bills showing the extent of her cell phone use, then the Complainant would be precluded from litigating claims that PPL Electric’s AMI meter would expose her to unreasonable levels of RF fields.

31. Finally, to the extent that this Motion is granted and the Complainant fails to answer fully PPL to Complainant Set I, or otherwise comply with the ALJ’s order, PPL Electric intends to file an appropriate motion pursuant to 52 Pa. Code §§ 5.371(a) and 5.372(a) to dismiss the Complaint with prejudice.

32. The Commission has regularly dismissed AMI meter complaints with prejudice due to the complainants' failure to answer discovery in compliance with the presiding administrative law judge's orders granting motions to compel. *See, e.g., Carol Sojda & Carol Lutzkanin v. Metropolitan Edison Co.*, Docket No. C-2017-2638350, pp. 7-8 (Jan. 9, 2019), *adopted*, Docket No. C-2017-2638350 (Order entered Mar. 28, 2019); *Kimberly Beckmann v. Metropolitan Edison Co.*, Docket No. C-2017-2613702, pp. 7-10 (Jan. 31, 2019), *adopted*, Docket No. C-2017-2613702 (Order entered Apr. 11, 2019); *Darlene Stanton v. Pennsylvania Electric Co.*, Docket No. C-2018-3001144, pp. 6-11 (May 10, 2019), *adopted*, Docket No. C-2018-3001144 (Order entered July 11, 2019); *Diana Cook v. West Penn Power Co.*, Docket No. C-2018-3003051, pp. 6-10 (May 1, 2019), *adopted*, Docket No. C-2018-3003051 (Order entered July 11, 2019).

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 Mary Toleno to answer fully PPL to Complainant Set I, as described above within three (3) days from the date of the order.

Respectfully submitted,



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Date: August 13, 2019

Attorneys for PPL Electric Utilities Corporation

APPENDIX A

Interrogatories and Requests for Production of Documents Propounded by PPL Electric Utilities Corporation on Mary Toleno – Set I



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File #: 167945

June 26, 2019

VIA CERTIFIED MAIL (7017 1450 0002 3778 0987)
VIA E-MAIL

Mary Toleno
218 Bird Lane
Kunkletown, PA 18058


Re: Mary Toleno v. PPL Electric Utilities Corporation
Docket No. C-2019-3007821

Dear Ms. Toleno:

Enclosed are the Interrogatories and Requests for Production of Documents Propounded by PPL Electric Utilities Corporation on Mary Toleno – 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

Mary Toleno
218 Bird Lane
Kunkletown, PA 18058
E-Mail: games1@nym.hush.com

Date: June 26, 2019



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mary Toleno,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2019-3007821
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent	:	

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED BY
PPL ELECTRIC UTILITIES CORPORATION ON
MARY TOLENO – SET I**

Pursuant to 66 Pa.C.S. § 333 and 52 Pa. Code §§ 5.341 *et seq.*, PPL Electric Utilities Corporation (“PPL Electric”) propounds the following Interrogatories and Requests for Production of Documents (hereinafter, “discovery requests”) on Mary Toleno (“Complainant”) – Set I.

INSTRUCTIONS AND DEFINITIONS

1. The “Responding Party,” “you,” or “your” means the party to which these discovery requests are propounded and/or all attorneys, agents, affiliates, subsidiaries, employees, consultants, members, constituents, and representatives acting on behalf of the Responding Party.
2. “Commission” means the Pennsylvania Public Utility Commission.
3. To “identify” a natural person means to state that person’s full name, title or position, employer, last known address, and last known telephone number.

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-2019-3007821.

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED ON
MARY TOLENO – 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.