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September 19, 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: Treasure Hoffman v. PPL Electric Utilities Corporation**  
**Docket No. C-2019-3010414**

Dear Secretary Chiavetta:

Enclosed please find the Replies of PPL Electric Utilities Corporation to the Exceptions of Treasure Hoffman 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

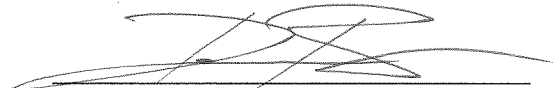
**CERTIFICATE OF SERVICE**

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**

Treasure Hoffman  
4 North Street  
PO Box 204  
Port Clinton, PA 19549

Date: September 19, 2019

A handwritten signature in black ink, appearing to read "Devin T. Ryan", written over a horizontal line.

Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Treasure Hoffman,	:
	:
Complainant,	:
	:
v.	: Docket No. C-2019-3010414
	:
PPL Electric Utilities Corporation,	:
	:
Respondent.	:

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**REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE  
EXCEPTIONS OF TREASURE HOFFMAN**

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Date: September 19, 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 Treasure Hoffman (“Complainant”). In the Initial Decision (“ID”), Administrative Law Judge Elizabeth H. Barnes (the “ALJ”) granted PPL Electric’s Preliminary Objection and dismissed the Complainant’s Formal Complaint challenging the Company’s installation of a new advanced metering infrastructure (“AMI”) meter at 4 North Street, Port Clinton, Pennsylvania 19549 due to alleged adverse health effects experienced by the Complainant’s mother, Evangeline Hoffman-Lorah. The ALJ correctly held that the Complaint should be summarily dismissed pursuant to the doctrine of *lis pendens* (codified at 52 Pa. Code § 5.101(a)(6)) because the issues regarding the installation of the AMI meter at this property, as well as the alleged adverse health effects experienced by Ms. Hoffman-Lorah, are already the subject of an ongoing litigation that is currently on appeal before the Commonwealth Court of Pennsylvania.

On September 3, 2019, the Complainant filed Exceptions to the ID.<sup>1</sup>

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.<sup>2</sup>

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<sup>1</sup> Per the Secretarial Letter serving the ID, Exceptions were due within 20 days (*i.e.*, by September 5, 2019), and Replies thereto were due within 10 days after that (*i.e.*, by September 16, 2019). The due date for Replies was later extended until September 19, 2019, by the Secretarial Letter issued on September 9, 2019. Therefore, these Replies are timely filed in response to the Complainant’s September 3, 2019 Exceptions.

<sup>2</sup> The Complainant failed to number each of her Exceptions as required by the Commission’s regulations. *See* 52 Pa. Code § 5.533(b) (stating “[e]ach exception must be numbered”). Therefore, PPL Electric treats the entirety of the Exceptions as one numbered exception.

## II. REPLIES TO EXCEPTIONS

### A. BACKGROUND

On January 29, 2018, PPL Electric was served with the Formal Complaint filed by the Complainant's mother, Evangeline Hoffman-Lorah ("Hoffman-Lorah Complaint"), against the Company at Docket No. C-2018-2644957, which challenged the planned installation of a new AMI meter at 1635 4<sup>th</sup> Street, Bethlehem, Pennsylvania 18020.<sup>3</sup>

On May 23, 2019, the Commission entered an Opinion and Order dismissing the Hoffman-Lorah Complaint ("*May 2019 Order*").<sup>4</sup>

On May 30, 2019, Ms. Hoffman-Lorah filed a Petition for Supersedeas of the *May 2019 Order* pending the resolution of her appeal. In her requested stay, she asked the Commission to prevent the Company from installing AMI meters at 1635 4<sup>th</sup> Street, Bethlehem, Pennsylvania 18020 and 4 North Street, Port Clinton, Pennsylvania 19549. Ms. Hoffman-Lorah alleged that the Hoffman-Lorah Complaint proceeding concerned both of these addresses.<sup>5</sup>

On or about June 6, 2019, Ms. Hoffman-Lorah filed a Petition for Review with the Commonwealth Court of Pennsylvania, seeking to challenge the Commission's *May 2019 Order*.

On June 10, 2019, PPL Electric was served with the Complainant's Formal Complaint filed at Docket No. C-2019-3010414, which challenged PPL Electric's installation of a new AMI meter at 4 North Street, Port Clinton, Pennsylvania 19549 due to alleged adverse health effects experienced by the Complainant's mother, Evangeline Hoffman-Lorah. (Complaint ¶¶ 4-5.) The service address listed in the instant Complaint is identical to the Port Clinton address that Ms. Hoffman-Lorah alleges was a part of the Hoffman-Lorah Complaint. The Complainant also

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<sup>3</sup> A true and correct copy of the Hoffman-Lorah Complaint was attached to PPL Electric's Preliminary Objection as Appendix B.

<sup>4</sup> A true and correct copy of the *May 2019 Order* was attached to PPL Electric's Preliminary Objection as Appendix C.

<sup>5</sup> A true and correct copy of the Petition for Supersedeas was attached to PPL Electric's Preliminary Objection as Appendix D.

did not contend that the new AMI meter has caused, contributed to, or exacerbated or will cause, contribute to, or exacerbate adverse health effects in herself.

On July 1, 2019, PPL Electric filed an Answer and New Matter as well as a Preliminary Objection to the Complaint. In its Preliminary Objection, PPL Electric argued that the Complaint should be dismissed pursuant to 52 Pa. Code § 5.101(a)(6) because the Complainant was simply trying to raise issues and allegations that were already the subject of her mother's ongoing proceeding.

On July 10, 2019, the Complainant filed an Answer to PPL's Preliminary Objection.

On August 16, 2019, the Commission issued the ALJ's ID, which granted PPL Electric's Preliminary Objection and dismissed the Complaint.

On September 3, 2019, the Complainant filed Exceptions to the ID.

**B. REPLY TO EXCEPTION NO. 1 – THE ALJ PROPERLY DISMISSED THE COMPLAINT PURSUANT TO 52 PA. CODE § 5.101(A)(6) BECAUSE THE COMPLAINT SOUGHT TO RAISE ISSUES AND ALLEGATIONS THAT WERE RAISED OR COULD HAVE BEEN RAISED IN HER MOTHER'S ONGOING PROCEEDING**

In the ID, the ALJ correctly determined that the Complainant's issues regarding the installation of a new AMI meter at her Port Clinton property are already the subject of her mother's ongoing litigation, which is currently pending before the Commonwealth Court. (ID at 6-8.) Therefore, the ALJ properly dismissed the Complaint pursuant to Section 5.101(a)(6) of the Commission's regulations due to the pendency of a prior proceeding, otherwise known as the doctrine of *lis pendens*.<sup>6</sup> (ID at 5-8.)

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<sup>6</sup> Under Section 5.101(a)(6) of the Commission's regulations, a party may file a preliminary objection if there is the "[p]endency of a prior proceeding." 52 Pa. Code § 5.101(a)(6). "This preliminary objection is also referred to as the doctrine of *lis pendens*." *Shan v. Verizon Pa. Inc.*, 2012 Pa. PUC LEXIS 34, at \*7 (Order entered Jan. 12, 2012). The doctrine of *lis pendens* "is designed to protect a defendant from having to defend several suits on the same cause of action at the same time." *Hillgartner v. Port Auth.*, 936 A.2d 131, 137 (Pa. Cmwlth. 2007) (citations omitted). The application of *lis pendens* "is purely a question of law determinable from an inspection of

In her Exceptions, the Complainant attempts to challenge the ALJ's dismissal of her Complaint. She argues that the Port Clinton property, which she admittedly co-owns with her mother, is not at issue in her mother's Complaint proceeding. (Exceptions, p. 1.) The Complainant also contends that her Complaint is not the same as her mother's Complaint because she has her own concerns about the Company's installation of AMI meter at her property. (Exceptions, p. 1.) Further, the Complainant alleges that her constitutional rights have been violated and that the installation of the AMI meter "constitutes felony assault" under 18 Pa. C.S. §§ 2701-2702. (Exceptions, p. 2.) These arguments completely lack merit.<sup>7</sup>

The ALJ correctly determined that the instant Complaint is barred by the doctrine of *lis pendens*. (ID at 6-8.) This doctrine requires proof that: (1) "the prior case is the same"; (2) "the parties are substantially the same"; and (3) "the relief requested is the same." *Hillgartner v. Port Auth.*, 936 A.2d 131, 137 (Pa. Cmwlth. 2007) (citations omitted). The second prong of the *lis pendens* test is met if the parties are in privity with each other. *Id.* at 140. "Privity is broadly defined as 'mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right.'" *Hillgartner*, 936 A.2d at 140 (quoting *Montella v. Berkheimer Assocs.*, 690 A.2d 802, 804 (Pa. Cmwlth. 1997)). "Typically, the same loss, the same measure of damages, and the same or nearly identical issues of fact and law are involved." *Id.* (internal quotation marks omitted).

Here, the ALJ properly found that the first prong of the *lis pendens* test was met. (ID at 7-8) The ALJ reasoned that the cases are the same because in both proceedings, the

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the records in the two causes." *Id.* (internal quotation marks omitted) (quoting *Procacina v. Susen*, 447 A.2d 1023, 1025 (Pa. Super. 1982)).

<sup>7</sup> The Complainant also erroneously claims in her Exceptions that the installation of the new AMI meter at the Port Clinton property was "illegal under Act 129" and that the Company should be forced to re-install the previous meter. (Exceptions, p. 3.) As the Commission has held in several prior cases, including the *May 2019 Order*, electric distribution companies such as PPL Electric are required to install new AMI meters for all of their customers pursuant to Act 129 of 2008. *See, e.g., May 2019 Order*, p. 43.



complainants have argued that PPL Electric should not have installed the new AMI meter at 4 North Street, Port Clinton, Pennsylvania 19549 due to alleged adverse health effects experienced by Ms. Hoffman-Lorah. (ID at 7-8.) Although the Complainant has tried to raise her own health and safety concerns, it is clear that “the complaint seeks to relitigate the same factual and legal issues raised or could have been raised in the Hoffman-Lorah Complaint proceeding, which is currently pending before the Commonwealth Court.” (ID at 7.)

Further, the second prong of the test was met because the Complainant and Ms. Hoffman-Lorah are in privity. (ID at 8.) As the ALJ held, “Ms. Hoffman and Ms. Hoffman-Lorah are co-owners of the instant service property” and they “are in a parent-child relationship.” (ID at 8.) The Complainant admits these facts, but argues that she is a different person from her mother. (Exceptions, p. 3.) That is not the test for “privity.” As explained previously, “Privity is broadly defined as ‘mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right.’” *Hillgartner*, 936 A.2d at 140 (quoting *Montella v. Berkheimer Assocs.*, 690 A.2d 802, 804 (Pa. Cmwlth. 1997)). Thus, the ALJ properly concluded that the Complainant and Ms. Hoffman-Lorah are in privity because the Complainant is Ms. Hoffman-Lorah’s daughter and they both own the property located at 4 North Street, Port Clinton, Pennsylvania 19549.

Additionally, the third prong of the test was met because both the Complainant and Ms. Hoffman-Lorah<sup>8</sup> requested that PPL Electric not install the new AMI meter at 4 North Street, Port Clinton, Pennsylvania 19549. (ID at 8.) Therefore, the ALJ properly found that the Complaint was barred by the doctrine of *lis pendens* and dismissed the Complaint.

The Complainant’s other arguments are entirely without merit as well. Contrary to the Complainant’s allegations, there have been no violations of her constitutional rights.

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<sup>8</sup> Ms. Hoffman-Lorah made this request in her Petition for Supersedeas filed on May 30, 2019.

(Exceptions, p. 2.) The dismissal of her Complaint did not violate her due process rights because she was given notice and an opportunity to be heard. *See 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.”). Indeed, PPL Electric’s Preliminary Objection was accompanied by a Notice to Plead, and the Complainant filed a response to that Preliminary Objection outlining the reasons why she believed her Complaint should not be dismissed. Although she may disagree with the outcome, she undoubtedly was afforded due process.

Moreover, PPL Electric’s installation of the new AMI meter at the Port Clinton property did not violate the Complainant’s constitutional rights, as alleged by the Complainant. For there to be a deprivation of constitution 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)); *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. Thus, PPL Electric cannot, by installing the new AMI meter, have violated the Complainant’s constitutional rights.

Finally, the Complainant’s claim that the installation of the AMI meter constitutes felony assault under 18 Pa. C.S. §§ 2701-2702 is not within the Commission’s jurisdiction. As a “creature of statute,” the Commission “has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication.” *Feingold v. Bell of Pa.*, 383 A.2d 791, 794 (Pa. 1977) (citing *Allegheny Cnty. Port Auth. v. Pa. PUC*, 237 A.2d 602 (Pa. 1967); *Del. River Port Auth. v. Pa. PUC*, 145 A.2d 172 (Pa. 1958)). The Commission cannot grant itself by regulation or order authority that was not conferred upon it by the Legislature. See *W. Pa. Water Co. v. Pa. PUC*, 370 A.2d 337, 339-40 (Pa. 1977) (citations omitted); *Fairview Water Co. v. Pa. PUC*, 502 A.2d 162, 165-66 (Pa. 1985) (citations omitted); *Fed. Deposit Ins. Corp. v. Bd. of Fin. & Revenue*, 84 A.2d 495, 499 (Pa. 1951) (citations omitted). Here, nothing in the Public Utility Code grants the Commission jurisdiction to interpret and enforce the criminal statutes set forth in Title 18 of the Pennsylvania Consolidated Statutes. Therefore, the Complainant’s allegation is outside of the Commission’s jurisdiction.

Based on the foregoing, the Complainant’s Exception No. 1 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 Treasure Hoffman and adopt the Initial Decision without modification.

Respectfully submitted,



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