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January 2, 2020

***VIA ELECTRONIC FILING***

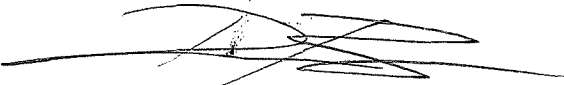
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Thomas Aguirre v. PPL Electric Utilities Corporation**  
**Docket No. C-2018-3005352**

Dear Secretary Chiavetta:

Enclosed for filing is the Answer of PPL Electric Utilities Corporation to the Petition For Reconsideration of Thomas Aguirre in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/dmc  
Enclosures

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                                     |   |                           |
|-------------------------------------|---|---------------------------|
| Thomas Aguirre,                     | : |                           |
|                                     | : |                           |
| Complainant,                        | : |                           |
|                                     | : |                           |
| v.                                  | : | Docket No. C-2018-3005352 |
|                                     | : |                           |
| PPL Electric Utilities Corporation, | : |                           |
|                                     | : |                           |
| Respondent.                         | : |                           |

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**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION TO  
THE PETITION FOR RECONSIDERATION OF THOMAS AGUIRRE**

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Date: January 2, 2020

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PPL Electric Utilities Corporation (“PPL Electric” or the “Company”), pursuant to 52 Pa. Code §§ 5.61 and 5.572, hereby respectfully submits this Answer to the Petition for Reconsideration filed by Thomas Aguirre (“Complainant”) on December 19, 2019, via first class mail.<sup>1</sup>

In his Petition, the Complainant requests reconsideration of the Pennsylvania Public Utility Commission’s (“Commission”) December 5, 2019 Opinion and Order (“*Final Order*”), which dismissed his Formal Complaint challenging the Company’s planned installation of a new automated metering infrastructure (“AMI”) meter at his property. The Complainant contends that the Commission should grant reconsideration because he should be granted a delay of the new AMI meter installation until the end of 2021, the Company incorrectly stated that he made the alternative request for a delayed installation for the first time in his Exceptions to the Initial Decision dismissing his Complaint, and the Commission overlooked his evidence about the Company’s notification letters in rendering its *Final Order*.

As explained herein, the Complainant fails to meet the Commission’s standard for reconsideration, and his claims completely lack merit. Therefore, the Petition should be denied.

## **I. INTRODUCTION AND BACKGROUND**

PPL Electric is a public utility that provides electric distribution and provider of last resort services in Pennsylvania subject to the regulatory jurisdiction of the Commission. PPL Electric furnishes electric distribution, transmission, and provider of last resort electric supply services to approximately 1.4 million customers throughout its certificated service territory,

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<sup>1</sup> Because the Petition was served via first class mail, three days were added to the 10-day period to file an Answer to the Petition. See 52 Pa. Code §§ 1.56(b), 5.572(e). Moreover, the due date rolled over to January 2, 2020, because January 1, 2020, was a legal holiday. See *id.* § 1.12(a).

which includes all or portions of 29 counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania.

On October 15, 2018, PPL Electric was served with the Formal Complaint filed by the Complainant.

On November 5, 2018, PPL Electric timely filed its Answer to the Complaint.

On November 8, 2018, a Notice was issued scheduling a telephonic evidentiary hearing for January 3, 2019.

On November 13, 2018, a Notice was issued rescheduling the telephonic evidentiary hearing for May 16, 2019.

On January 4, 2019, PPL Electric filed a Notice of Appearance for Curtis S. Renner, Esquire, appearing as additional counsel on behalf of PPL Electric.

On February 1, 2019, Administrative Law Judge Elizabeth H. Barnes (the "ALJ") issued a Prehearing Order, which, among other things, directed the Complainant to serve his exhibits and written expert testimony and exhibits on or before March 8, 2019, and directed PPL Electric to serve its written testimony and exhibits on or before April 10, 2019.

On April 10, 2019, PPL Electric served its written direct testimony and exhibits in compliance with the Prehearing Order.

On April 16, 2019, the Complainant filed a letter requesting that the telephonic evidentiary hearing be converted to an in-person evidentiary hearing.

By letter dated April 29, 2019, the Complainant served the exhibits he planned to use at the evidentiary hearing.

On May 2, 2019, a Notice was issued that converted the telephonic evidentiary hearing on May 16, 2019, to an in-person or call-in hearing.

The hearing was held as scheduled on May 16, 2019.

On July 17, 2019, the ALJ's well-reasoned Initial Decision was issued by the Commission, which dismissed the Complainant's Complaint.

On August 2, 2019, the Complainant filed Exceptions to the Initial Decision.

On August 16, 2019, PPL Electric filed Replies to Exceptions.

On December 5, 2019, the Commission entered its *Final Order* denying the Complainant's Exceptions, adopting the Initial Decision without modification, and dismissing the Complaint.

On December 19, 2019, the Complainant filed a Petition for Reconsideration of the *Final Order*.

For the reasons explained below, the Complainant's Petition should be denied.

## II. LEGAL STANDARDS

The Commission's standard for reviewing petitions for reconsideration following final orders is set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982) (emphasis added):

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that "[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them...." What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Consequently, for a petition to warrant reconsideration by the Commission, it must demonstrate new and novel arguments that were raised below by the petitioner, but not previously considered by the Commission. The Commission has cautioned that the last portion of the operative language of the *Duick* standard -- “by the Commission” -- focuses on the deliberations of the Commission, not the arguments of the parties. *See Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597, p. 3 (Order entered May 22, 2014). Therefore, a petition for reconsideration cannot be used to raise new arguments or issues that should have been, but were not, previously raised.

A petition seeking relief under the *Duick* standard may properly raise any matter designed to convince the Commission that it should exercise its discretion to rescind or amend a prior order in whole or part. Importantly, however, the *Duick* standard does not permit a petitioner to raise issues and arguments considered and decided below such that the petitioner obtains a second opportunity to argue properly resolved matters. *Id.* Further, as explained by the Pennsylvania Supreme Court, petitions for reconsideration of a final agency order may only be granted judiciously and under appropriate circumstances because such action results in the disturbance of final agency orders. *City of Pittsburgh v. Pa. Dep’t of Transp.*, 490 Pa. 264, 416 A.2d 461 (1980).

As explained below, the Complainant’s Petition clearly fails to satisfy the standards for granting reconsideration.

### III. ARGUMENT

#### A. **THE COMPLAINANT'S REQUEST FOR RECONSIDERATION SHOULD BE DENIED**

In his Petition, the Complainant claims that the Commission should grant reconsideration because he is entitled to a delay of the new AMI meter installation until the end of 2021, the Company incorrectly stated that he made the alternative request for a delayed installation for the first time in his Exceptions to the Initial Decision, and the Commission overlooked his evidence concerning the Company's notification letters in rendering its *Final Order*. The Complainant's Petition is without merit and should be denied.

As a preliminary matter, the Complainant completely failed to preserve any substantive arguments challenging the factual findings in the Initial Decision that would warrant reversal by the Commission on reconsideration. The Commission has held that parties waive any arguments that they fail to raise in their Exceptions and properly preserve for appeal. *See Merritt v. Duquesne Light Co.*, 2011 Pa. PUC LEXIS 1197, at \*9-10 (Order entered Mar. 31, 2011) (quoting *Generic Investigation Regarding Transp. Assessments*, Docket No. I-2008-2022003 (Order entered Aug. 26, 2008)). Indeed, "[i]n the interest of judicial economy," the Commission "will not grant reconsideration based on an argument which that same party abandoned earlier in the proceedings." *Id.*

Here, the Complainant failed to preserve any substantial challenge to the rejection of his health-related claims and his requested relief based thereon. In its *Final Order*, the Commission held that the Complainant's Exceptions "failed to assert any basis upon which to overturn the ALJ's Findings of Fact and Conclusions of Law." *Final Order*, p. 17. Rather than actually disputing the ALJ's findings, the Complainant's Exceptions argued that the "factual findings" were "incomplete" and, therefore, "requir[ed] clarification." *Id.*, p. 18 (internal quotation marks

omitted). However, the Commission could not “infer any discernable factual or legal argument from the Exceptions, as stated, which would support the reversal of the ALJ’s medical and technical findings to support the ALJ’s conclusion that the Complainant failed to establish a *prima facie* claim for unreasonable or unsafe service based on harm to the Complainant’s health and safety caused by PPL’s installation of [a] smart meter.” *Id.* Thus, the Complainant failed to preserve any arguments raised in his Petition that dispute the ALJ’s findings, which were adopted by the Commission in its *Final Order*.

Even assuming *arguendo* that the Complainant’s arguments were preserved for his Petition, the Complainant completely fails to meet the *Duick* standard for reconsideration. In his Petition, the Complainant tries to re-raise allegations that the Commission already considered and denied in its *Final Order*, namely that the new AMI meter will cause, contribute to, or exacerbate adverse health effects and that he should be granted a delay in the AMI meter installation until the end of 2021. (*See* Exceptions, pp. 1-11; Petition, pp. 1-3.) As explained previously, the *Duick* standard does not permit the Complainant to raise issues and arguments considered and decided below such that he obtains a second opportunity to argue properly resolved matters. *See Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597, p. 3.

In this case, the Commission expressly rejected the Complainant’s claim that the installation of the new AMI meter would violate Section 1501 of the Public Utility Code based upon his health-related claims. *See Final Order*, pp. 17-22. Therefore, the Complainant’s allegations that the new AMI meter will cause, contribute to, and exacerbate adverse health effects and that the new AMI meter should not be installed until the end of 2021 completely fail to meet the *Duick* standard for reconsideration.<sup>2</sup>

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<sup>2</sup> To the extent that these arguments are considered, PPL Electric incorporates its response to these arguments in its Replies to Exceptions as though fully set forth herein.

Furthermore, the Complainant failed to preserve his argument that the Company's notification letters allegedly do not "adequately inform its customer base" because he did not raise it in his Exceptions. (Petition, p. 2; Exceptions, pp. 1-11.) Nothing in the Complainant's Exceptions even mentions: (1) the Company's notification letters to customers; or (2) his Exhibit A, which contained copies of the notification letters he received.<sup>3</sup> (See Exceptions, pp. 1-11.) Therefore, the Complainant's argument about the notification letters was waived. See *Merritt v. Duquesne Light Co.*, 2011 Pa. PUC LEXIS 1197, at \*9-10 (Order entered Mar. 31, 2011) (quotation omitted).

Even if the Commission were to consider this argument about the notification letters, which it should not, the Complainant's argument wholly lacks merit. PPL Electric's letters notifying customers about the upcoming AMI meter installations, including the 45-day letter that the Complainant mentions specifically in his Petition, comply with the Commission's requirements and the Company's AMI Program Communications Plan.<sup>4</sup> (See PPL Electric Exhibit KD-2.) Indeed, the 45-day letter notifies the customers that the Company is planning to install the new AMI meter in about six weeks and provides information to customers, including a hyperlink to the Company's website, about the new AMI meters. (See Complainant's Exhibit A; PPL Electric Exhibit KD-2, Appendix C.) Moreover, the 45-day letter was developed as part of the Company's Smart Meter Plan proceeding at Docket No. M-2014-2430781. Specifically, a form of the 45-day letter was included as Appendix C of the Company's AMI Program

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<sup>3</sup> The Complainant also references his Exhibit B and erroneously claims that it shows PPL Electric's "correspondence with stock holders and other legal matters." (Petition, p. 2.) In actuality, the Complainant's Exhibit B is a copy of the United States Court of Appeals for the Seventh Circuit's decision in *Naperville Smart Meter Awareness v. City of Naperville*, 900 F.3d 521 (7th Cir. 2018).

<sup>4</sup> The AMI Program Communications Plan was filed on January 15, 2016, at Docket No. M-2014-2430781 pursuant to the Commission's September 3, 2015 Order approving the Company's Smart Meter Plan with certain modifications. *Petition of PPL Electric Utilities Corp. for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781, p. 69 (Order Entered Sept. 3, 2015) ("2015 Smart Meter Order").

Communications Plan. (See PPL Electric Exhibit KD-2, Appendix C.) Therefore, the Company's use of the 45-day letter is consistent with the AMI Program Communications Plan that is on file with the Commission. Additionally, the Company's 45-day letter clearly did not confuse the Complainant about the type of meter that would be installed at his property, given that he filed his Formal Complaint challenging the new AMI meter before the planned installation. (See Formal Complaint; PPL Electric Statement No. 3, p. 4; PPL Electric Exhibit KD-1.)

Finally, the Complainant incorrectly asserts that PPL Electric argued in its Replies to Exceptions that he raised his request for a delayed AMI meter installation for the first time in his Exceptions. (See Petition, 2.) Although the *Final Order* states that the Company made this argument in its Replies to Exceptions,<sup>5</sup> it is evident from reviewing PPL Electric's Replies that the Company did not make this assertion.<sup>6</sup> Rather, the Company solely focused on rebutting the alleged merits of the Complainant's proposed delay in the AMI meter installation until the end of 2021. (See Replies to Exceptions, pp. 19-21.) Nonetheless, this statement in the *Final Order* is inconsequential. By failing to establish a *prima facie* case that the installation of the new AMI meter would violate Section 1501 of the Public Utility Code,<sup>7</sup> the Complainant was entitled to no relief, including his request for a delay in his AMI meter installation until the end of 2021.<sup>8</sup> Moreover, as explained in the Company's Replies to Exceptions, the Complainant's proposal conflicts with the Company's Commission-approved Smart Meter Plan and the Commission's encouragement for electric distribution companies to expedite the deployment process. (See

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<sup>5</sup> See *Final Order*, p. 17.

<sup>6</sup> See Replies to Exceptions, pp. 19-21.

<sup>7</sup> See *Final Order*, p. 17.

<sup>8</sup> See Replies to Exceptions, p. 20.

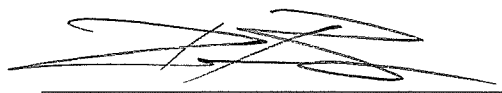
Replies to Exceptions, pp. 20-21.) Therefore, the Commission correctly considered and denied the Complainant's proposal for a delayed AMI meter installation.

For these reasons, the Complainant's Petition for Reconsideration is without merit and should be denied.

#### IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission deny the Petition for Reconsideration filed by Thomas Aguirre in its entirety.

Respectfully submitted,



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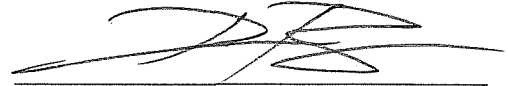
## CERTIFICATE OF SERVICE

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

Thomas Aguirre  
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Date: January 2, 2020

A handwritten signature in black ink, appearing to read 'D. Ryan', written over a horizontal line.

Devin T. Ryan