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January 16, 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: Nelson Hess v. PPL Electric Utilities Corporation
Docket No. C-2018-3003337

Dear Secretary Chiavetta:

Enclosed for filing is the Answer of PPL Electric Utilities Corporation to the Petition for Rehearing and Consideration of Nelson Hess in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Very truly yours,



Garrett P. Lent

GPL/dmc
Enclosure

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

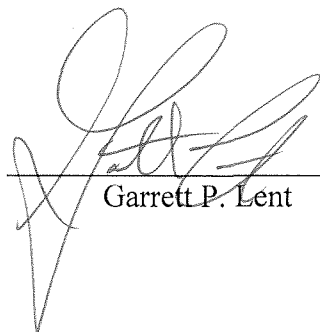
CERTIFICATE OF SERVICE

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 & REGULAR MAIL

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Date: January 16, 2020



Garrett P. Lent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nelson Hess,	:
	:
Complainant,	:
	:
v.	: Docket No. C-2018-3003337
	:
PPL Electric Utilities Corporation,	:
	:
Respondent.	:

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION TO
THE PETITION FOR REHEARING AND RECONSIDERATION OF
NELSON HESS**

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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 Rehearing and Reconsideration filed by Nelson (“Complainant”) on January 3, 2020. In his Petition, the Complainant requests rehearing and/or reconsideration because, among other things, he has “new evidence” not considered issued by the Pennsylvania Public Utility Commission’s (“Commission”) December 19, 2019 Order or Administrative Law Judge Elizabeth H. Barnes (“ALJ”) and the fact that the Complainant suffered a stroke on December 8, 2019. As explained herein, the Complainant’s request for reconsideration is without merit. The “new evidence” that the Complainant seeks to present existed prior to the close of the record, and the Complainant failed to seek its admission into the record. In addition, despite claiming that he suffered a stroke on December 8, 2019, this new evidence is irrelevant to his Complaint because the Complainant admits that his “doctors could not find a cause” for the stroke. Therefore, even if the Complainant’s stroke were considered, it would have no effect on the Commission’s sound determination that the Complainant failed to prove that installing the new automated metering infrastructure (“AMI”) meter would violate Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501. Furthermore, reconsideration is not an additional opportunity for Mr. Hess to try and introduce such new evidence or arguments. 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,

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

On July 11, 2018, PPL Electric was served with the Formal Complaint filed by the Complainant.

On July 31, 2018, PPL Electric filed its Answer to the Complaint.

On August 10, 2018, a notice was issued scheduling an initial telephonic prehearing conference for August 29, 2018. Also on August 10, 2018, the ALJ issued the Prehearing Conference Order.

On September 4, 2018, the ALJ issued a Prehearing Order, which established an initial telephonic hearing for January 9, 2019. Among other things, the Prehearing Order also directed the Complainant to serve copies of exhibits and written expert testimony on or before October 22, 2018.

On October 19, 2018, the Complainant filed an Amended Complaint.

PPL Electric filed an Answer to the Amended Complaint on November 14, 2018.

The ALJ issued a Protective Order, dated April 9, 2019.

On May 3, 2019, the Complainant filed a Second Amended Complaint with Complainants Exhibits 1 and 2 attached.

On May 13, 2019, PPL filed an Answer to the Second Amended Complaint.

An evidentiary hearing was held on May 14, 2019.

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

The Complainant filed Exceptions to the Initial Decision on July 8, 2019. PPL Electric filed Replies to Exceptions on July 18, 2019.

On December 19, 2019, the Commission issued an Opinion and Order which: (1) denied the Complainant's Exceptions; (2) adopted the well-reasoned Initial Decision issued by the ALJ; and (3) denied and dismissed the above-captioned Formal Complaint ("*Final Order*").

The Complainant thereafter filed the instant Petition on January 3, 2019.

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

II. LEGAL STANDARDS

The Commission's standard for reviewing petitions for rehearing¹ and reconsideration following final orders is set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559, 1982 Pa. PUC LEXIS 4 (Opinion and Order Upon Reconsideration dated Dec. 17, 1982) (emphasis added):

A petition for rehearing, under the provisions of 66 Pa C.S. § 703(f), properly must seek the reopening of the record for the introduction of additional evidence of some sort. As grounds therefore it must allege newly discovered evidence, not discoverable though the exercise of due diligence prior to the close of the record. *Public Utility Commission v Reading Co.* (1975) 21 Pa Cmwlth 334, 338, 345 A2d 311; *Mobilfone v Pennsylvania Pub. Utility Commission* (1975) 24 Pa Cmwlth 243, 355 A2d 611; *Abramson v Pennsylvania Pub. Utility Commission* (1980) 489 Pa 267, 414 A2d 60.

...

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

¹ See *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co. and West Penn Power Co. for Approval of their Default Serv. Programs*, 2012 Pa. PUC LEXIS 1533, at *4-5 (Order entered Sept. 27, 2012) (explaining that the *Duick* standard applies to "petitions for rehearing, reargument, and clarification" as well).

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 rehearing and 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 rehearing, reconsideration, or both.

III. ARGUMENT

A. THE COMPLAINANT'S REQUEST FOR REHEARING AND RECONSIDERATION SHOULD BE DENIED

In his Petition, the Complainant claims that the Commission should grant reconsideration to *inter alia* allow him to present (a) “new evidence” that allegedly demonstrates smart meters are not safe, and (b) evidence he recently suffered a stroke. *See* Petition, pp. 2-3. The Complainant further summarizes and references various reports, studies, websites, documents, and a case allegedly pending before the Commonwealth Court to support his Petition. *See id.* The Complainant’s Petition is without merit and should be denied.

First, 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, that an AMI meter presents cybersecurity concerns, and that an AMI meter should not be installed at his property. (*See* Exceptions, pp. 1-11; Petition, pp. 1-4.) 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- and cybersecurity-related claims. *See Final Order*, pp. 18-35. Therefore, the Complainant’s allegations that the new AMI meter will cause, contribute to, and exacerbate adverse health effects, that the new AMI meter raises cybersecurity concerns, and that the new

AMI meter should not be installed on his residence completely fail to meet the *Duick* standard for reconsideration.²

Second, the Complainant's failure to present evidence that was in existence and readily prior to the close of the evidentiary record does not meet the *Duick* standard for reconsideration. Importantly, the Commission in *Duick* explain that, where a petition for rehearing seeks reopening of the record or reconsideration based upon new evidence, the petition "must allege [the] newly discovered evidence...[was] not discoverable though the exercise of due diligence prior to the close of the record." *Duick*, at 559.

Here, the Complainant cites various unnamed scientific studies, a November 2018, National Toxicology Program "Fact Sheet," three additional websites (*i.e.*, links to www.EMFScientist.org, www.babysafeproject.org, and the Federal Communications Commission), a case allegedly pending before the Commonwealth Court,³ and undisclosed "new information on the vulnerability of hackers to the electric grid," as additional evidence in support of his claims. Petition, pp. 2-3. The Complainant fails to allege that this evidence was not discoverable prior to the close of the record. In addition, the Complainant's reliance on documents dated prior to the close of the record and publicly accessible hyperlinks betrays any such claim. Reconsideration is not another opportunity for the Complainant to attempt to introduce additional evidence that he could have discovered prior to the close of record and sought to introduce at hearing. Therefore, the Complainant has failed to demonstrate to meet the *Duick* standard for reconsideration.

² 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.

³ Mr. Hess references that there is ongoing litigation involving "William and Jean Haas" pending before the Commonwealth Court. *See* Petition, p. 3. There is no such case pending before the Commonwealth Court. In fact, the Commission dismissed Mr. Haas's Formal Complaints against PPL Electric on August 13, 2019, and Mr. Haas never appealed that decision. *See Haas v. PPL Electric Utilities Corp.*, Docket Nos. C-2018-3005984, *et al.* (Order entered Aug. 13, 2019).

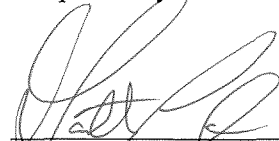
Third, the stroke that the Complainant claims to have suffered on December 8, 2019, is irrelevant to his Formal Complaint and would have no impact on the Commission's adjudication. Although the stroke occurred after the record close, the Complainant admits in his Petition that the doctors treating him "could not find a cause." Petition, p. 3. Therefore, the Complainant concedes that he cannot establish a link between the stroke and the Company's AMI meters. This is consistent with the testimony of PPL Electric's expert witnesses, who established that there is no scientific or medical basis to conclude that the new AMI meters cause, contribute to, or exacerbate adverse health effects. As a result, the Complainant's "new evidence" is irrelevant and would have no impact on the Commission's sound ruling that the Complainant failed to prove that the installation of the new AMI meter would violate Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501. Thus, the Complainant's request for reconsideration or rehearing is not warranted.

For these reasons, the Complainant's Petition for Rehearing and 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 Rehearing and Reconsideration filed by Nelson Hess in its entirety.

Respectfully submitted,



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Date: January 16, 2020

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