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January 23, 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: Sharon Landis v. PPL Electric Utilities Corporation
Docket No. C-2018-3002142

Dear Secretary Chiavetta:

Enclosed please find the Replies of PPL Electric Utilities Corporation to the Exceptions of Sharon Landis for filing in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Very truly yours,

Garrett P. Lent

GPL/dmc
Enclosures

cc: Honorable Elizabeth Barnes (*w/enclosures*)
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

Sharon Landis
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Camp Hill, PA 17011

Date: January 23, 2020

Garrett P. Lent

17141365v1

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Sharon Landis,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3002142
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE EXCEPTIONS OF SHARON LANDIS

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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 Sharon Landis ("Complainant"). In the Initial Decision ("ID"), Administrative Law Judge Elizabeth H. Barnes (the "ALJ") dismissed the Complainant's Formal Complaint challenging the Company's planned installation of a new advanced metering infrastructure ("AMI") meter at her property. The ALJ correctly held that the Complainant failed to prove by a preponderance of evidence that the installation of the AMI meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501. The ALJ also correctly held that there is no provision to "opt-out" of a smart meter installation under Pennsylvania law.

On January 9, 2020, the Complainant filed Exceptions to the ID.[1]

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.[2]

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[1] PPL Electric notes that the Complainant's Exceptions were not due until January 13, 2020, *i.e.*, 20 days after the ID was issued on December 23, 2019. Therefore, the Company's Replies to the Exceptions are timely filed because they are due 10 days after the January 13, 2020 due date for the Complainant's Exceptions. *See* Secretarial Letter Serving the Initial Decision; 52 Pa. Code § 5.535(a).

[2] While the Complainant numbered each of her Exceptions (e.g., Exceptions, p. 11 (starting with item labeled "1."), she did not cite within her exceptions the relevant pages of the ID. *See* 52 Pa. Code § 5.533(b). The Complainant did, however, attach a copy of the ID that includes notations corresponding to each Exception. *See e.g.*, Exceptions, p. 24 (attached ID at 6). Therefore, PPL Electric treats every numbered heading to be an individual Exception, of which there are 19 in total. In addition, the Complainant's filing includes pages labeled "L-1" and "L-2". While the Complainant does not label these pages as Exceptions, PPL Electric treats these as Exceptions and responds to both. Moreover, there is substantial overlap in the Complainant's Exceptions. Accordingly, PPL Electric responds to the Complainant's Exceptions by subject matter rather than individually by the number of the Exception.

II. REPLIES TO EXCEPTIONS

A. REPLIES TO EXCEPTIONS NOS. L-1, L-2, 1-4, 6-17, 19 – THE ALJ PROPERLY FOUND THAT THE COMPLAINANT FAILED TO SUSTAIN HER BURDEN OF PROOF THAT INSTALLING THE NEW AMI METER WOULD VIOLATE SECTION 1501 OF THE PUBLIC UTILITY CODE

The Complainant disputes the ALJ's finding that she failed to meet her burden of proof that installing the new AMI meter would violate Section 1501 of the Public Utility Code. (Exceptions, pp. 1-8.) According to the Complainant, the installation of the new AMI meter could cause adverse health effects, based on her own experiences. (L-1, pp. 1-2, L-2, pp. 1-2, Exceptions, pp. 1-8.) In fact, the Complainant avers that she experiences heart palpitations when in proximity to the existing powerline carrier ("PLC") meter installed her premises. (L-2, p. 2.) As explained herein, the Complainant's Exceptions are without merit and should be denied.

1. The ALJ Correctly Determined that There Is No Reliable Medical or Scientific Basis to Conclude that the New AMI Meter Will Cause, Contribute to, or Exacerbate Any Adverse Health Effects

The ALJ properly held that there is no reliable medical or scientific basis to conclude that the new AMI meter will cause, contribute to, or exacerbate any adverse health effects. (ID at 9-14.) As the ALJ found, "[t]here is no reliable medical basis to conclude that RF fields from the AMI meter being used by PPL Electric will cause or contribute to the development of illness or disease." (ID at 13.) In addition, the ALJ found "t]here is no reliable medical basis to conclude that RF fields from the AMI meter being used by PL Electric would cause, contribute, to or exacerbate any of the symptoms claimed by the Complainant[], or any other adverse health effects." (ID at 13.)

In reaching these determinations, the ALJ relied on PPL Electric's credible and reliable expert testimony refuting the Complainant's unsupported assertions[3] that the AMI meter could cause adverse health effects. (PPL St. No. 1, pp. 5-16; PPL Exhibits CD-1 through CD-5; PPL St. No. 2, pp. 7-18; PPL Exhibits MI-1 through MI-3.) First, Dr. Davis testified that the Federal Communications Commission ("FCC") has determined safe public exposure levels for RF fields from devices that transmit RF signals, such as the AMI meters. (PPL St. No. 1, p. 9.) The FCC safe public exposure limits are based on evaluations of the body of scientific research on RF fields and were adopted in consultation with other federal agencies, including the Food and Drug Administration ("FDA") and the Environmental Protection Agency ("EPA"). (PPL St. No. 1, p. 9.) The FCC continues to coordinate with the agencies and to consider whether new scientific research shows any adverse effects from RF fields. (PPL St. No. 1, pp. 9-11.) In fact, the FCC recently reviewed its current RF exposure limits and the scientific research related thereto in response to a Notice of Inquiry issued by the FCC. "After reviewing the extensive record submitted in response to that inquiry" by over 564 commenters, the FCC found "no appropriate basis for and thus decline[d] to propose amendments to [its] existing limits at this time." *In the Matter of Proposed Changes in the Comm'n's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields,* 2019 FCC LEXIS 3622, at *2, *483 n.1 (F.C.C. Dec. 4, 2019).

Based on the engineering specifications for the Landis + Gyr AMI meter being deployed by the Company, Dr. Davis calculated that the levels of RF fields from the AMI meters are **98,000 times lower** than the RF exposure safety limits established by the FCC. (PPL St. No. 1, p. 13; PPL Exhibit CD-2.) As a result, Dr. Davis found that "the RF field levels from the AMI

[3] The Complainant acknowledges in her Exceptions that, consistent with the ALJ's findings, she does not have an engineering degree or a medical degree. (Exceptions, p. 2.)

meters being used by PPL Electric more than comply with the applicable FCC RF exposure limit." (PPL St. No. 1, p. 13.) Moreover, the RF signals from the AMI meter are of very short duration and will occur for only a total of 84 seconds over a 24-hour period. (PPL St. No. 1, p. 7.)

Dr. Davis also testified that there are many sources of RF signals in the everyday environment and the RF fields from the AMI meter are much lower than from other typical sources. (PPL St. No. 1, p. 14.) For example, RF fields from using cell phones can be over 260,000 times higher than the RF fields from the AMI meter, and RF exposures from microwave ovens can be over 820,000 times higher. (PPL St. No. 1, p. 14.) Even 30 feet away from a person using a cell phone, the RF fields are 3 times higher than from the AMI meter. (PPL St. No. 1, p. 14.)

Furthermore, the existing background levels of RF fields at the Complainant's residence are many times higher than the fields from the AMI meter. (PPL St. No. 1, p. 15.) Dr. Davis testified that there are six television broadcast towers within a 50-mile radius of the Complainant's location. (PPL St. No. 1, p. 15.) Based on the locations of each tower and their RF power outputs, the RF fields at three meters from the AMI meter being used by PPL Electric are 111 times smaller than the background RF exposure at the Complainant's residence. (PPL St. No. 1, p. 15; PPL Exhibit CD-5.) Thus, considering the AMI meter's RF fields are substantially lower than the FCC standard and many everyday sources, there is no reliable scientific basis to conclude very low levels of RF fields from the AMI meters being deployed by the Company can or will cause any adverse thermal or non-thermal biological effects in people. (PPL St. No. 1, pp. 15-16.) Notably, Dr. Davis's expert testimony on these points was not contradicted by any other expert testimony.

Second, Dr. Israel – the only medical expert to present testimony in this case – evaluated the scientific research on RF fields and adverse health effects. (PPL St. No. 2, pp. 8-11.) He testified that he has been systematically examining this research over the past several decades and that many hundreds of studies have been published. (PPL St. No. 2, p. 6.) Dr. Israel stated that the three groups of controlled laboratory studies on animals "are particularly informative because they address fundamental biological functions that are very sensitive to any disruption: genetics, reproduction, and growth and development." (PPL St. No. 2, pp. 8-9.) Dr. Israel described a number of the studies in these areas which he considered good examples of well-designed and well-conducted studies, which found no adverse effects on genetics, fertility, reproduction, growth, or development in the animals exposed to RF fields. (PPL St. No. 2, pp. 8-9.) Further, Dr. Israel provided examples of well-conducted animal studies on RF fields and cancer. (PPL St. No. 2, pp. 9-10.) These studies also did not find any increased incidence in cancer in the RF exposed animals compared to non-exposed animals. (PPL St. No. 2, pp. 9-10.)

Based on the body of scientific research showing no consistent and reproducible effects from RF fields on cancer and other adverse health effects, the World Health Organization ("WHO") has concluded that "no adverse health effects have been established as being caused by mobile phone use." (PPL St. No. 2, p. 10.) Many other public health authorities, including agencies in Canada, the U.K., Sweden, Norway, the Netherlands, and New Zealand, among others, have recently reached similar conclusions. (PPL St. No. 2, pp. 10-11.) Further, several U.S. state public health authorities and public utility commissions have investigated claims about health effects from smart meters, all of which have found that RF fields from smart meters do not pose any public health risk. (PPL St. No. 2, p. 11.)

In addition, Dr. Israel reviewed the published scientific research on electromagnetic hypersensitivity ("EHS") from the perspective of a medical doctor. (PPL St. No. 2, pp. 12-15.) He was the only medical doctor to provide expert testimony in this case. Dr. Israel testified that claimed symptoms related to EHS are more accurately described as "Idiopathic Environmental Intolerance" ("IEI"), in which "idiopathic" means "cause unknown," rather than electromagnetic hypersensitivity. (PPL St. No. 2, p. 12.) This is consistent with a recommendation from the WHO. (PPL St. No. 2, pp. 12-13.) Dr. Israel evaluated the scientific research on IEI and found that "[r]eliable studies dating back to at least 2002 and also recent reviews of the studies by experts and reviews by expert panels of public health authorities have found IEI and the variety of symptoms attributed to it are not caused by exposure to RF fields." (PPL St. No. 2, p. 13.) For example, a systematic review of 46 studies involving 1,175 individuals who claimed IEI symptoms found that people claiming IEI symptoms from RF fields could not replicate the claimed effect under controlled laboratory conditions. (PPL St. No. 2, p. 13.) Another recent study found that people who claimed IEI symptoms from RF fields reported lower levels of well-being when they knew they were exposed to RF fields, but when they did not know if they were being exposed, their reports of symptoms were not associated with RF fields. (PPL St. No. 2, p. 14.) That study concluded that "it is IEI-EMF individuals' belief that exposure to RF EMFs will cause harm, rather than actual exposure itself, that results in the presence of symptoms in IEI-EMF individuals." (PPL St. No. 2, p. 14.) Moreover, the research on IEI has been evaluated by credible public health entities and expert groups, including the United Kingdom Health Protection Agency (2012), the Royal Society of Canada (2013), the New Zealand Ministry of Health (2015), and the European Commission's Scientific Committee on Emerging and Newly Identified Health Risks (2015). (PPL St. No. 2, pp. 14-15.)

In connection with the Complainant's allegations that she experiences "heart racing & pounding" due to exposure to "electromagnetic objects," Dr. Israel further testified that there have been a number of studies that examined whether RF fields at the frequencies used by cell phones affect heart rates. (PPL St. No. 2, p. 15.) Those studies indicated no significant changes in heart rates from RF exposures. (PPL St. No. 2, pp. 15-16.) Based on their reviews of the scientific research, these entities concluded there is no reliable scientific evidence that exposure to RF fields causes claimed IEI symptoms. (PPL St. No. 2, p. 16.)

Based on the evidence presented, the ALJ correctly concluded that the "Complainant has failed to show any health concerns . . . are likely to be caused, contributed to, or exacerbated by the AMI meter installed at her service property." (ID at 10.) The Company presented overwhelming evidence through its scientific and medical expert witnesses, Dr. Christopher Davis and Dr. Mark Israel, to support the ALJ's finding that there is no reliable basis to conclude that the new AMI meter will cause or contribute to any adverse health effects. Nevertheless, the Complainant contends that the ALJ erred in finding that she failed to sustain her burden of proof. The Commission should reject the Complainant's arguments because they mischaracterize the record evidence and applicable law.

To begin, the Complainant fails to recognize the burden of proof applied by the Commission in this proceeding. It is well-established that "[p]roof of causation is required in order to prevail under Section 1501." *Hoffman-Lorah v. PPL Elec. Utils. Corp.*, 2019 Pa. PUC LEXIS 195, at *62 (Order entered May 23, 2019), *appeal pending*, 712 C.D. 2019; *see, e.g.*, *Sunstein Murphy v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 159, at *51-52 (Order entered May 9, 2019), *appeal pending*, 606 C.D. 2019. It is not sufficient to merely demonstrate "a potential for harm." *Hoffman-Lorah*, 2019 Pa. PUC LEXIS at 62. Therefore, a person does not sustain

his or her burden of proof in an electric and magnetic field exposure case when the record evidence, "taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive." *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Cntys.*, 1992 Pa. PUC Lexis 160, at *210-11 (June 29, 1992) (Initial Decision) ("*Woodbourne-Heaton*").

Here, the Complainant merely has alleged she experiences symptoms when exposed to her current PLC meter and asserts that a hold on meter related shut offs be immediately implemented.[4] (Exceptions, pp. 1-8.) Such bald assertions, personal opinions or perceptions do not constitute evidence. *See Mid-Atlantic Power Supply Ass'n v. Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citation omitted). Further, testimony consisting of guesses, conjecture or speculation cannot prove a party's claims. *Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Dep't of Highways*, 398 Pa. 518, 159 A.2d 206 (1960). Thus, the ALJ correctly held that the Complainant did not sustain her burden of proof that the AMI meter's installation could cause, contribute to, or exacerbate adverse health effects.

Moreover, the Complainant's argument is inherently flawed. She "believe[s]" that the current PLC meter sends a radio signal that causes her alleged symptoms. (Tr. 20-21.) However, the current PLC meter does <u>not</u> contain a radio transmitter and, therefore, does <u>not</u> produce any RF fields. (PPL St. No. 4, p. 5; Tr. 25.) Rather, the PLC meter uses the powerlines to transmit electric usage information to PPL Electric. (PPL St. No. 4, p. 5.) The Complainant even declares that "[i]t is not known if or what symtoms [sic] would be increased" by a meter with increased levels of RF fields compared to her existing PLC meter (Exceptions, p. 7), which,

[4] As explained previously, PPL Electric's expert witnesses presented credible, thorough, and reliable testimony establishing that there is no reliable medical or scientific basis to conclude that the AMI meters will cause, contribute to, or exacerbate adverse health effects.

as explained previously, produces no RF fields. Therefore, the Complainant's allegations regarding the PLC meter cannot prove that the RF fields from the new AMI meter will cause, contribute to, or exacerbate her alleged health issues.

Additionally, the Complainant argues that she does not need to be an expert to testify as to her personal experiences and that the ALJ erred by not finding her personal opinions persuasive. (Exceptions, pp. 2-3.) According to the Complainant, her opinions regarding the health and safety of RF meters should be accepted by the Commission. (Exceptions, pp. 2-3.) While the Complainant may be able to testify as to her own experiences, that does not qualify her to render expert opinions in the medical or engineering fields. The ALJ properly concluded that the Complainant is neither an engineer nor a medical professional and that her lay opinions as to the health effects of an RF meter are not persuasive. (ID at 10.) In contrast, PPL Electric presented expert testimony completely rebutting the Complainant's claims that the new AMI meters cause, contribute to, or exacerbate adverse health effects.

The Complainant also contends that certain letters attached to her Exceptions (i.e., "L-1" and "L-2") demonstrate she has health conditions that may be caused or exacerbated by the installation of an AMI meter. (L-1 and L-2 to Exceptions.) However, as the ALJ explained with respect to the Complainant's testimony and evidence at hearing, such letters simply state some health conditions that the Complainant may be experiencing or have been experiencing. (*See* ID at 10.) The Complainant completely failed to present evidence showing that any of those health conditions would be caused or exacerbated by the AMI meter's installation. (*See* ID at 10.) Thus, the Commission should disregard these claims entirely.

2. The Commission Should Reject the Complainant's Attempt to Introduce and Rely on Extra-Record Evidence in Her Exceptions

In her Exceptions, the Complainant improperly attempts to introduce and rely upon evidence that was not admitted at the hearing and, therefore, is not a part of the record. Specifically, the Complainant presents, cites to, or mentions the following materials, which are **not** in the record:

- "L-1" and "L-2" – Described in the cover letter to her Exceptions as being related to "Being a person with asthma & allergies, the idea of not having my air conditioner to help me breath safely & well would cause me problems. (See L-1 & L-2)";
- Item 1-b[5] – A print out from the National Institute of Environmental Health Sciences website titled "Cell Phone Frequency Radiation", undated.
- Item 1-c – A document prepared by the National Toxicology Program titled, "Cell Phone Radio Frequency Radiation Studies", dated November 2018.
- Item 1-d – A print out from the National Institute of Environmental Health Sciences website titled, "High Exposure to Radio Frequency Radiation Associated With Cancer in Male Rates," dated November 1, 2018.
- Exceptions, pp. 1, 3-5 – Statements with reference to and relying upon Items 1-b, 1-c, and 1-d.
- Exceptions, pp. 4-5 – Statements about how persons with pacemakers are instructed to keep cellphones away from their pacemakers.
- Exceptions, pp. 7-8 – Statements about how there is no ability to test for Alzheimer's Disease and comparing that to the inability to test and diagnose EHS.

(L-1 and L-2 to Exceptions; Exceptions, Items 1-b, 1-c, and 1-d.)

The Commission should completely disregard the Complainant's extra-record evidence and her arguments based on that extra-record evidence. It is well-established that parties cannot

[5] The Complainant did not separately label the documents attached to her Exceptions or number them as pages to her Exceptions. However, in Exception No. 1 she appears to reference the four un-labeled, appended documents as "Items 1-a, 1-b, 1-c, and 1-d." (Exceptions, p. 1.) For purposes of its Replies to Exceptions, PPL Electric will refer to each document as Item 1-a, 1-b, 1-c or 1-d, respectively.

introduce evidence for the first time at the exceptions stage.[6] "The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness." *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." *Id.* (citations omitted). Indeed, Section 332(c) of the Public Utility Code entitles every party to, among other things, "submit rebuttal evidence" and "conduct such cross-examination as may be required for a full and true disclosure of the facts." 66 Pa. C.S. § 332(c); *see Pa. PUC v. Nat'l Fuel Gas Distrib. Corp.*, 1993 Pa. PUC LEXIS 95, at *10 (Order entered July 30, 1993) ("[S]uch material was outside the record and could be detrimental to the rights of other parties to confront such evidence.").

Here, these alleged facts and materials were introduced for the first time in the Complainant's Exceptions. By waiting until her Exceptions to present these new alleged facts and materials, the Complainant denied PPL Electric an opportunity to review and inspect that evidence, to cross-examine the Complainant about that evidence, and to present evidence in rebuttal. Therefore, it would violate PPL Electric's due process rights for any of the Commission's findings to be based upon or influenced by the Complainant's extra-record evidence.

In addition, Section 5.431 of the Commission's regulations prescribes that "[t]he record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission." 52 Pa. Code § 5.431(a). Particularly relevant here, "[a]fter the record is

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[6] *See, e.g., Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45, at *8-9 (Order entered Feb. 10, 1994) (denying party's attempt to introduce extra-record evidence in its exceptions).

closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion." *Id.* § 5.431(b). Petitions to reopen the record can be granted "if there is reason to believe that conditions of factor or law have so changed as to requires, or that the public interest requires, the reopening of the record." 52 Pa. Code § 5.571.

Here, the record closed on November 14, 2019. (ID at 2.) The Complainant made no motion to keep the record open or to reopen the record so that her extra-record evidence could be admitted. Moreover, in her Exceptions, the Complainant never demonstrates good cause for introducing this extra-record evidence, nor does she show changes in fact or law that would warrant the reopening of the record to admit such evidence. As a result, the Complainant's extra-record evidence cannot be admitted into the record.

Thus, although PPL Electric has decided not to burden the Commission with ruling on a Motion to Strike these portions of the Complainant's Exceptions, the Commission should not rely on the Complainant's extra-record evidence to make any findings in this proceeding. *See, e.g.*, *Petition of Pa. Power Co. for Approval of Interim POLR Supply Plan*, 2006 Pa. PUC LEXIS 56, at *3 (Order entered Apr. 28, 2006) (observing that "ALJ Gesoff ignored Reliant's Reply Brief, due to the extra-record evidence contained within").

For these reasons, the Complainant's Exceptions Nos. L-1, L-2, 1-4, 6-17, 19 should be denied.

B. REPLIES TO EXCEPTIONS NOS. 17 AND 18: THE ALJ CORRECTLY REJECTED THE COMPLAINANT'S ARGUMENT THAT SHE SHOULD BE ABLE TO "OPT OUT" OF HAVING THE AMI METER INSTALLED

In her Exceptions, the Complainant challenges the ALJ's conclusion that Pennsylvania law does not permit the Complainant to "opt out" of having the AMI meter installed. (Exceptions, p. 7 (referencing ID at 14-15).) In response to these conclusions, the Complainant

contends that "[i]t is not known if or what symtoms[sic] would be increased by a stronger meter w/ a stronger magnetic field" and that "[w]hen a meter related shut-off would cause health issues, this [opt-out] issue should be carefully considered." (Exceptions, p. 7 (emphasis in original).)

The ALJ properly held that the installation of the new AMI meter is required by law. (ID at 16-19.) Section 2807(f) of the Public Utility Code prescribes that EDCs, like PPL Electric, must file smart meter plans and "**shall** furnish smart meter technology" in any of the following situations: (1) "[u]pon request from a customer that agrees to pay the cost of the smart meter at the time of the request"; (2) "[i]n new building construction"; and (3) "[i]n accordance with a depreciation schedule not to exceed 15 years." 66 Pa. C.S. § 2807(f)(1)-(2) (emphasis added). In interpreting the smart meter provisions of Act 129, the Commission declared that EDCs must "deploy smart meters system-wide" because of the requirement that smart meters be deployed "in accordance with a depreciation schedule not to exceed 15 years." *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655, p. 14 (Order entered June 24, 2009) ("*Smart Meter Implementation Order*"). The Commission also "recognize[d] that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment." *Id.*, pp. 9, 14.[7] Therefore, PPL Electric must install the new smart meters for every customer in its service territory, including the Complainant.

In addition, nothing in Act 129 permits a customer to "opt-out" of a smart meter installation. In fact, the Commission has repeatedly held that PPL Electric must install the new

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[7] *See also Springirth v. Nat'l Fuel Gas Distrib. Corp.*, 1991 Pa. PUC LEXIS 44, at *1-3, 6, 16-17 (Order entered Apr. 12, 1991) (dismissing complaint of customer seeking to make installation of automated meter reading devices optional, noting that the Commission previously found in another case that "[t]he customer should not be given the option of refusing installation of equipment" because "[t]o permit customer discretion in this area would be inefficient and uneconomical") (quoting *Stenker v. The York Water Co.*, Docket No. C-871318 (Order entered July 27, 1987)).

AMI meters for all of its customers. *See Hoffman-Lorah v. PPL Electric Utilities Corp.*, 2019 Pa. PUC LEXIS 195, at *72-73; *Schmukler v. PPL Electric Utilities Corp.*, Docket No. C-2017-2621285, pp. 73-74 (Order entered July 23, 2019), *appeal pending*, 1102 C.D. 2019. Similarly, the Commission found in several other cases that Act 129 contains no such opt-out language. *See, e.g.*, *Starr v. PECO Energy Co.*, Docket No. C-2015-2516061, p. 11 (Order Entered Sept. 1, 2016) (footnote omitted). Specifically, in *Starr*, the Commission observed that it has "rejected similar claims that the installation of smart meters is not mandatory or that an opt-out is permissible under Act 129." *Id.*; *see Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602, pp. 8-10 (Order entered May 3, 2018); *Povacz v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 102, at *156-59 (Order entered Mar. 28, 2019), *appeal pending*, 492 C.D. 2019; *Sunstein Murphy v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 159, at *157-59; *Randall & Albrecht v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 160, at *145-48 (Order entered May 9, 2019), *appeal pending*, 607 C.D. 2019. Thus, a customer cannot opt-out of the AMI meter installation under Act 129.

Moreover, PPL Electric must comply with the relevant Commission orders directing the Company to deploy the new AMI meters. As mentioned previously, the Commission determined that the Company's existing PLC meters are not compliant with Act 129 and the Commission's *Smart Meter Implementation Order*. *See Petition of PPL Electric Utilities Corporation for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123945, p. 24 (Order entered June 24, 2010) ("*2010 Smart Meter Order*"). Under the Company's Commission-approved Smart Meter Plan, PPL Electric must replace all of the PLC meters with the RF Mesh meters, which the Commission declared as meeting all of the requirements of Act 129 and the Commission's *Smart Meter Implementation Order*. *See Petition*

of PPL Electric Utilities Corp. for Approval of Its Smart Meter Technology Procurement and Installation Plan, Docket No. M-2014-2430781, p. 24 (Order Entered Sept. 3, 2015) ("*2015 Smart Meter Order*"). PPL Electric is not permitted to install any other type of meter under its Smart Meter Plan and cannot leave the existing, non-compliant PLC meter in place. (*See* PPL St. No. 4, p. 6.) Therefore, if the Company does not install the new RF Mesh meter on the Complainant's residence in accordance with the Commission-approved deployment schedule,[8] PPL Electric may violate the Commission's *2010 Smart Meter Order, 2015 Smart Meter Order*, and *Smart Meter Implementation Order.*

Based on the foregoing, the Commission should deny the Complainant's Exceptions Nos. 17 and 18.

C. REPLY TO EXCEPTION NO. 5 – THE ALJ PROPERLY DENIED THE COMPLAINANT'S ARGUMENTS AGAINST TERMINATION

The Complainant also appears to contend that the ALJ in its representation that Complainant "believed PPL would terminate her electric service." (Exceptions, pp. 1-2 (referencing ID at 9-10).) According to the Complainant, PPL Electric said it would terminate her service in separate notices hung on her door and in-person. (Exceptions, pp. 1-2.)

This Exception should be denied. Under the Public Utility Code, the Commission's regulations, and the Company's Commission-approved tariff, PPL Electric is expressly permitted to terminate service if it is denied access to its meter for the purpose of replacement. *See* 66 Pa.

[8] In the *Smart Meter Implementation Order*, the Commission encouraged EDCs "to expedite the deployment process if it will provide increased customer benefits in a cost effective manner." *Smart Meter Implementation Order*, p. 14. The Commission also recognized that system-wide deployment of smart meters would involve "more than just the meter hardware attached to the customer's premises." *Id.*, p. 6. EDCs would need time to select the technology, train personnel, and deploy the entire AMI network, including any associated hardware and software. *Id.* For PPL Electric, the Company's Commission-approved Smart Meter Plan states that the smart meters are to be deployed system-wide from 2017 through 2019 with additional actions beyond 2019 to get the full network up and running. (PPL Exhibit DV-1, pp. 3, 32; PPL St. No. 4, p. 6.) Notably, in approving the Company's Smart Meter Plan, the Commission found that the deployment of PPL Electric's new RF Mesh meters "should be done sooner rather than later." *2015 Smart Meter Order*, p. 36.

C.S. § 1406(a)(4) (stating that "[f]ailure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading" is grounds for terminating service); 52 Pa. Code § 56.81(3) (stating the same); Tariff Rule 10(B)(2)(g), Supplement No. 227 to Electric Pa. P.U.C. No. 201, Fourteenth Revised Page No. 14A (stating that service may be terminated when "[t]he Company's authorized representatives cannot gain admittance or are refused admittance to the premises for the purpose of reading meters, making repairs, making inspections, or removing Company property, or the customer interferes with Company representatives in the performance of their duties, or the meters or other equipment of the Company are not accessible during reasonable hours.").

Here, PPL Electric was authorized to issue termination notices to the Complainant because she denied the Company access to the property to replace its meter. Specifically, on May 3, 2018, the Company sent the Complainant a termination notice informing her that her electric service would be shut off on May 18, 2018. (PPL St. No. 3, p. 9.) On May 17, 2018, a PPL Electric representative contacted the Complainant, notified her that the scheduled service termination would be postponed until the following week with a new termination date, and advised the Complainant that she could contact the Commission or file an informal or formal complaint with the Commission. (PPL St. No. 3, p. 9.) Ultimately, PPL Electric did not terminate the Complainant's service. The record evidence showed that once PPL Electric was served with the Complaint, it postponed termination of service until the Commission rules on the Complaint. (PPL St. No. 3, p. 9.) Thus, the Complainant presented no evidence that PPL Electric terminated her service or issued any termination notices in violation of the Code, the Commission's regulations or PPL Electric's tariff.

For these reasons, the Commission should deny the Complainant's Exception No. 5.

D. THE COMMISSION SHOULD DENY THE COMPLAINANT'S ALTERNATIVE REQUESTS FOR RELIEF, WHICH WERE RAISED FOR THE FIRST TIME IN HER EXCEPTIONS

For the first time in this proceeding, the Complainant makes three alternative requests for relief in the filing letter accompanying her Exceptions. These alternative requests are that the Company should bear the cost of relocating her AMI meter to a different location, that she should be permitted to be pay for the meter relocation cost over a period of months, or that the AMI meter's installation should be stayed until bills amending Act 129 of 2008 to add an opt-out are passed. (*See* Exceptions, Cover Letter, pp. 1-5.)

The Commission should completely reject these alternative requests for relief. It is well-established that parties cannot introduce new proposals or arguments for the first time in their exceptions. *See, e.g.*, *Pa. PUC v. Columbia Gas of Pa., Inc.*, 2009 Pa. PUC LEXIS 1843, at *37-38 (Order entered Sept. 30, 2009); *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at *85 (Order entered May 3, 2018); *Investigation Instituted into Whether the Comm'n Should Order a Capable Pub. Util. to Acquire Clean Treatment Sewage Co. Pursuant to 66 Pa. C.S. § 529*, 2012 Pa. PUC LEXIS 870, at *72 (Order entered May 25, 2012); *Application of PPL Elec. Utils. Corp.*, 2014 Pa. PUC LEXIS 5, at *39-40 (Order entered Jan. 9, 2014). Because these requests were raised for the first time at the exceptions stage, no record has been developed on these alternative requests for relief. Therefore, the Complainant's introduction of these alternative requests for relief, for the first time in her Exceptions, has denied the Company due process. *See Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citations omitted).

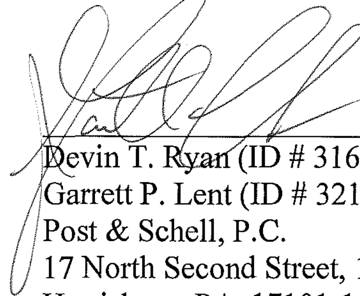
Moreover, even assuming *arguendo* that these alternative requests for relief are considered, her first two alternative requests (*i.e.*, PPL Electric bearing the cost of meter relocation or her paying the cost to relocate over a period of months) conflict with the express terms of PPL Electric's Commission-approved tariff. (*See* PPL Exh. KD-6.) Further, her third

alternative, which requests that the AMI meter installation be stayed until bills amending Act 129 are passed, should be rejected. There is no guarantee if or when any such bills will be passed. Therefore, the requested relief, if granted, could amount to an indefinite stay on the meter's installation, which would conflict with Act 129's mandate for AMI meter installations, the Company's Smart Meter Plan, and the Commission's related orders.

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 Sharon Landis and adopt the Initial Decision without modification.

Respectfully submitted,



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Date: January 23, 2020

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