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January 27, 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: Lawrence and Debra Esposito v. PPL Electric Utilities Corporation
Docket No. C-2019-3007334

Dear Secretary Chiavetta:

Enclosed please find the Replies of PPL Electric Utilities Corporation to the Exceptions of Lawrence and Debra Esposito 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 (*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 E-MAIL AND FIRST CLASS MAIL

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Date: January 27, 2020

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**

Lawrence and Debra Esposito,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2019-3007334
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE
EXCEPTIONS OF LAWRENCE AND DEBRA ESPOSITO**

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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 Lawrence and Debra Esposito (“Complainants”). In the Initial Decision (“ID”), Administrative Law Judge Elizabeth H. Barnes (the “ALJ”) dismissed the Complainants’ Formal Complaint challenging the Company’s planned installation of a new advanced metering infrastructure (“AMI”) meter at their property. The ALJ correctly held that the Complainants 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.¹

On January 14, 2020, the Complainants filed Exceptions to the ID.²

As explained herein, the Complainants’ Exceptions are without merit and should be denied. Accordingly, the Company respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) deny the Complainants’ Exceptions and adopt the ID without modification.³

¹ PPL Electric observes that the Complainants failed to file Exceptions to this finding by the ALJ. Therefore, even assuming *arguendo* that the Complainants’ Exceptions are granted, the Complainants have waived the right to challenge the ALJ’s finding that the new AMI meter’s installation is required by law. It is well-established that parties waive any arguments that they fail to raise in their Exceptions before the PUC and properly preserve for appeal. *Springfield Twp. v. Pa. PUC*, 676 A.2d 304, 309 (Pa. Cmwlth. 1996) (citations omitted); *HIKO Energy, LLC v. Pa. PUC*, 163 A.3d 1079, 1094 (Pa. Cmwlth. 2017) (citations omitted), *affirmed*, 2019 Pa. LEXIS 3139 (Pa. 2019); *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)). Thus, the Complainants cannot be granted their requested relief, *i.e.*, an opt-out of the new AMI meter’s installation, even if their Exceptions are granted.

² PPL Electric notes that the Complainants’ Exceptions were not due until January 15, 2020, *i.e.*, 20 days after the ID was issued on December 26, 2019. Therefore, the Company’s Replies to the Exceptions are timely filed because they are due 10 days after the January 15, 2020 due date for the Complainants’ Exceptions. *See* Secretarial Letter Serving the Initial Decision; 52 Pa. Code § 5.535(a).

³ The Complainants failed to number each of their Exceptions as required by the Commission’s regulations, and even repeat the numbering for other Exceptions. *See* 52 Pa. Code § 5.533(b) (stating “[e]ach exception must be numbered”). Therefore, PPL Electric treats every bold heading to be an individual Exception, of which there are 10 in total. Moreover, there is substantial overlap in the Complainants’ Exceptions. Accordingly, PPL Electric responds to the Complainants’ Exceptions by subject matter rather than individually by the number of the Exception.

II. REPLIES TO EXCEPTIONS

A. **REPLIES TO EXCEPTIONS NOS. 1-10 – THE ALJ PROPERLY FOUND THAT THE COMPLAINANTS FAILED TO SUSTAIN THEIR BURDEN OF PROOF THAT INSTALLING THE NEW AMI METER WOULD VIOLATE SECTION 1501 OF THE PUBLIC UTILITY CODE**

The Complainants dispute the ALJ's finding that they failed to meet their burden of proof that installing the new AMI meter would violate Section 1501 of the Public Utility Code. (Exceptions, pp. 3-8.) According to the Complainants, the installation of the new AMI meter could cause adverse health effects, based on their own experiences and lay research and their baseless criticisms of PPL Electric's expert witnesses. (Exceptions, pp. 3-7.) The Complainants also contend that the AMI meter raises privacy concerns. (Exceptions, pp. 7-8.) As alleged support for their arguments, the Complainants reference extra-record evidence and even attach some of those referenced documents to their Exceptions. (Exceptions, pp. 4-40.) As explained herein, the Complainants' 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 11-14.) 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.) More specifically, the ALJ determined that "[t]here is no reliable medical basis to conclude that RF fields from the AMI meter being used by PPL Electric would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainants, or any other adverse health effects." (ID at 13.)

In reaching that determination, the ALJ relied on PPL Electric's credible and reliable expert testimony refuting the Complainants' bald assertions 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, as stated in the ID, 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. *See* ID at 13-14. "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 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 Complainants’ residence are many times higher than the fields from the AMI meter. (PPL St. No. 1, p. 15.) Dr. Davis testified that there are 8 television broadcast towers within a 50-mile radius of the Complainants’ 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 10.9 times smaller than the background RF exposure at the Complainants’ 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, p. 8.) 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, p. 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, pp. 12-13.) This is consistent with a recommendation from the WHO. (PPL St. No. 2, p. 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. 14.) 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, p. 15.) 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. 15.)

Based on the evidence presented, the ALJ correctly concluded that the “Complainants have failed to show any health concerns . . . are likely to be caused, contributed to, or exacerbated by the AMI meter installed at their service property.” (ID at 11.) 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 Complainants contend that the ALJ erred in finding that they failed to sustain their burden of proof. The Commission should reject the Complainants’ arguments because they mischaracterize the record evidence and applicable law.

To begin, the Complainants fail 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 Complainants merely allege that the new AMI meter should not be installed because they believe RF fields could “possibl[y]” produce “negative consequences.” (Exceptions, p. 3.) 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 Complainants did not sustain their burden of proof that the AMI meter’s installation could cause, contribute to, or exacerbate adverse health effects.

The Complainants also argue that they do not need to be experts to testify on these issues and that any expert opinions are “prone to error.” (Exceptions, pp. 5-6.) While the Complainants may be able to testify as to their own experiences, that does not qualify them to render expert opinions in the medical or engineering fields. The ALJ properly concluded that the Complainants are neither engineers nor medical professionals and that their lay opinions as to the health effects of an RF meter are not persuasive. (ID at 11.) In contrast, PPL Electric presented expert testimony completely rebutting the Complainants’ claims that the new AMI meters cause, contribute to, or exacerbate adverse health effects.

Additionally, the Complainants incorrectly contend that the ALJ erred by excluding the “BioInitiative Report” from the record. (Exceptions, pp. 4, 6-7.) The Complainants never attempted to present any exhibits, let alone the BioInitiative Report, during their direct testimony. (*See* Tr. 9-48.) As correctly stated in the ID, “[a]t the hearing, Complainants

appeared *pro se* with no exhibits.” (ID at 2.) Also, even if the BioInitiative were presented by the Complainants, which it was not, it would not have affected the outcome of the ID. As Dr. Israel explained, the BioInitiative Report: (1) is not a scientific study published in a peer reviewed scientific journal; (2) entirely lacks “scientific objectivity,” as many public health authorities and expert groups have found; and (3) “does not provide a reliable scientific basis for reaching conclusions about RF fields and health.” (PPL St. No. 2, p. 16; PPL Exhibit MI-4.) Therefore, the Complainants’ arguments based on the BioInitiative Report should be disregarded.

Lastly, the Complainants’ characterization of the expert opinions of Dr. Christopher Davis and Dr. Mark Israel as “biased” completely lacks merit. As explained previously, both of these experts’ credentials and credibility are unassailable. They both are renowned experts in their respective fields of expertise (*see* PPL St. No. 1, pp. 1-5; PPL St. No. 2, pp. 1-7), and their expert opinions have been relied upon in several court proceedings and many proceedings before this Commission.⁴ Notably, the Complainants never objected at the hearing to Dr. Davis and Dr. Israel being certified as experts in their fields of expertise. (*See* Tr. 61, 73.) Moreover, nothing in the record even hints at the “bias” alleged by the Complainants. Thus, the ALJ properly relied on the expert opinions offered by Dr. Davis and Dr. Israel in rendering her ID.

2. The ALJ Correctly Held that the Complainants Failed to Prove that the New AMI Meter Is a Privacy Risk

The Complainants also contest the ALJ’s finding that the new AMI meters are cyber-secure and do not present a privacy risk. (Exception, pp. 7-8.) In their Exceptions, the

⁴ *See, e.g., Newman v. Motorola, Inc.*, 218 F. Supp.2d 769 (D. Md. 2002), *affirmed*, 78 Fed. Appx. 292 (4th Cir. 2003); *Lakey v. Puget Sound Energy, Inc.*, 296 P.3d 860 (Wash. 2013); *Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line in Portions of Lackawanna, Luzerne, Monroe, Pike and Wayne Counties, Pennsylvania*, Docket Nos. A-2009-2082652, *et al.* (Order entered Feb. 12, 2010); *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Order entered May 3, 2018).

Complainants point to extra-record evidence, specifically, a list of alleged data breaches experienced by Equifax, Indian Banks, JPMorgan Chase, Goodwill Industries, Home Depot, and the Office of Personnel Management. (Exceptions, pp. 7-8.) This list also contains links to various webpages about those alleged incidents. (Exceptions, pp. 7-8.) The Complainants' argument is without merit.

First, the ALJ properly found that the Complainants failed to prove that the new AMI meter is a privacy risk. (ID at 15-16.) PPL Electric presented overwhelming evidence that its AMI meter does not present privacy or cybersecurity concerns. PPL Electric witness Vinciguerra testified that “[c]ybersecurity was one of the cornerstones” of its Smart Meter Plan filing and that the Company takes several steps to protect the data it receives from the new AMI meters, including the use of technologies such as firewalls, encryption, digital signatures, authentication and access controls. (PPL St. No. 4, pp. 7-8.) Data collected within the meters is protected through proprietary-based applications and five levels of password protection. (PPL St. No. 4, p. 7.) Prior to transmission, the data is highly encrypted utilizing advanced security appliances. (PPL St. No. 4, p. 7.) Once the data reaches the Company's head systems, the data is further protected through means of firewalls and user role functions. (PPL St. No. 4, p. 7.) These user role functions limit the availability of data and functions to only what the user's job requires, and even within these roles, the user is only granted a security key that allows access for that day. (PPL St. No. 4, pp. 7-8.) All of these cybersecurity policies and practices are consistent with the national standard for the industry. (PPL St. No. 4, p. 8.)

As a part of its Smart Meter Plan proceeding, PPL Electric filed a detailed AMI Customer Privacy Policy, which sets forth the data PPL Electric will collect through the new smart meter, the steps the Company will take to protect the data, and the ways in which PPL Electric will use

the data. (PPL St. No. 3, p. 6; PPL Exhibit KD-3.) Consistent with that policy, the Company will collect data on the total amount of electricity used at the premises as well as significant event information, such as outages, voltage, heat alarms, and meter tampering alerts. (PPL St. No. 3, p. 7; PPL Exhibit KD-3, Section 1.2.) Moreover, as the ALJ stated, if the Complainants are concerned about the AMI Meter's connection to smart appliances in their home, they can choose not to have the ZigBee radio activated. (ID at 15.) Thus, as the ALJ properly determined, the Complainants failed to prove that the new AMI meter is a privacy risk.

3. The Commission Should Reject the Complainants' Attempt to Introduce and Rely on Extra-Record Evidence in Their Exceptions

In their Exceptions, the Complainants improperly attempt to introduce and rely upon evidence that was not admitted at the hearing and, therefore, is not a part of the record. Specifically, the Complainants present, cite to, or mention the following materials, which are not in the record:

- The BioInitiative Report;
- An article from www.thenation.com titled "How Big Wireless Made Us Think That Cell Phones Are Safe: A Special Investigation" dated March 29, 2018;
- Excerpts from an adapted version of the document titled "Tobacco Explained" by Clive Bates and Andy Rowell;
- Excerpts from a document titled "Breathless and Burdened" from the Center for Public Integrity;
- An article from *The Guardian* titled "The EPA is meant to protect us. The Monsanto trials suggest it isn't doing that" dated May 7, 2019.
- An article from the *Washington Post* titled "UL: Still Safety's Symbol? Underwriters Laboratories Draws Fire on Product Tests" dated November 24, 1999; and
- List of various alleged data breaches and links to webpages related to those breaches.

(Exceptions, pp. 4-40.)

The Commission should completely disregard the Complainants' extra-record evidence and their arguments based on that extra-record evidence. It is well-established that parties cannot introduce evidence for the first time at the exceptions stage.⁵ "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 documents were introduced or referenced for the first time in the Complainants' Exceptions. By waiting until their Exceptions to present these new alleged facts and materials, the Complainants denied PPL Electric an opportunity to review and inspect that evidence, to cross-examine the Complainants 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 Complainants' extra-record evidence.

⁵ 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).

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 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 fact or law have so changed as to require, or that the public interest requires, the reopening of the record." 52 Pa. Code § 5.571.

Here, the record closed on December 6, 2019. (ID at 2.) The Complainants made no motion to keep the record open or to reopen the record so that their extra-record evidence could be admitted. Moreover, in their Exceptions, the Complainants never demonstrate good cause for introducing this extra-record evidence, nor do they show changes in fact or law that would warrant the reopening of the record to admit such evidence. As a result, the Complainants' 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 Complainants' Exceptions, the Commission should not rely on the Complainants' 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 Complainants' Exceptions Nos. 1-10 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 Lawrence and Debra Esposito and adopt the Initial Decision without modification.

Respectfully submitted,



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Date: January 27, 2020

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