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January 31, 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: Linda E. Beck and Hubert P. Beck v. PPL Electric Utilities Corporation
Docket No. C-2018-3002924

Dear Secretary Chiavetta:

Enclosed please find the Replies of PPL Electric Utilities Corporation to the Exceptions of Linda E. and Hubert P. Beck for filing in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Devin Ryan

DTR/jl
Enclosures

cc: Honorable Elizabeth Barnes
Certificate of Service
Office of Special Assistants (*ra-OSA@pa.gov*)

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 & FIRST CLASS MAIL

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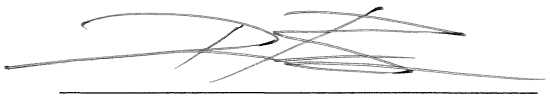

Devin T. Ryan

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Linda E. and Hubert P. Beck,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2018-3002924
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE EXCEPTIONS OF LINDA E. AND HUBERT P. BECK

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Date: January 31, 2020

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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 Linda E. and Hubert P. Beck ("Complainants"). In the Initial Decision ("ID"), Administrative Law Judge Elizabeth H. Barnes (the "ALJ") dismissed the Complainants' Formal Complaint challenging the Company's 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 violated 66 Pa. C.S. §§ 1501 and 1502. The ALJ also properly determined that there is no provision to "opt-out" of a smart meter installation under Pennsylvania law.

On January 15, 2020, the Complainants filed Exceptions to the ID.[1]

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.[2]

[1] PPL Electric notes that the Complainants' Exceptions were not due until January 21, 2020, *i.e.*, 20 days after the ID was issued on December 30, 2019, plus the additional day because January 20, 2020, was Martin Luther King Day. Therefore, the Company's Replies to the Exceptions are timely filed because they are due 10 days after the January 21, 2020 due date for the Complainants' Exceptions. *See* Secretarial Letter Serving the Initial Decision; 52 Pa. Code § 5.535(a).

[2] The Complainants label their Exceptions as "Item 1," "Item 2," etc. rather than "Exception No. 1," "Exception No. 2," etc. Therefore, PPL Electric treats every "Item" heading to be an individual Exception, of which there are 18 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 AND 3-18 – THE ALJ PROPERLY FOUND THAT THE COMPLAINANTS FAILED TO SUSTAIN THEIR BURDEN OF PROOF THAT INSTALLING THE NEW AMI METER VIOLATED 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 violated Sections 1501 and 1502[3] of the Public Utility Code. (Exceptions, pp. 3-19.) According to the Complainants, the installation of the new AMI meter caused adverse health effects, based on their own experiences. (Exceptions, pp. 3-14, 17-19.) They also contend that the ALJ erred in relying on the testimony of PPL Electric's expert witnesses, rather than their own lay testimony and exhibits. (Exceptions, pp. 3-19.) Furthermore, as alleged support for their arguments, the Complainants attempt to introduce and rely on several items of extra-record evidence in their Exceptions. (Exceptions, pp. 3-4, 7-8, 10-18.) 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 11-15.) 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.) Furthermore, the ALJ held 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.)

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[3] *See* Section II.B., *infra*, for further explanation on why the Complainants' Section 1502 argument is without merit.

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 causes or contributes to 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 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 at least 5 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 at least 7.21 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 that the 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, 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, pp. 13-14.) 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, pp. 14-15.) 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 have alleged they experience symptoms when exposed to RF fields and assert that there needs to be more long-term testing of RF fields from the AMI meters.[4] (Exceptions, pp. 3-14, 17-19.) 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.

Moreover, the Complainants erroneously contend that the ALJ should have admitted and relied on all of their pre-served hearing exhibits. (Exceptions, pp. 4-6.) According to the Complainants, the ALJ excluded nearly all of their hearing exhibits, except for Exhibits L and N, and should have given more weight to their Exhibits L and N in the ID. (Exceptions, pp. 4-6.) The Complainants also argue that the ALJ should not have excluded their exhibits related to the Americans with Disabilities Act ("ADA").[5] (Exceptions, pp. 4-6.)

In reality, the Complainants never mentioned or moved for the admission of many of their pre-served exhibits. Only Complainants' Exhibits A, L, N, and O were mentioned at the hearing. (Tr. 7-8, 20-21, 24-26.) Of those Exhibits, Complainants' Exhibits A and O were

[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.

[5] The Complainants also take issue with the ALJ ruling on the Company's Motion in Limine the day of the hearing. (Exceptions, pp. 5-6.) It was more than appropriate for the ALJ to do so because that was then the exhibits were being moved for admission into the record. If anything, PPL Electric's decision to file a Motion in Limine in advance of the hearing gave the Complainants more time to prepare their arguments in response to the Company's objections.

excluded from the record because they concerned the Americans with Disabilities Act, which is outside of the Commission's jurisdiction.[6] (Tr. 7-8.) Complainants' Exhibits L and N were admitted into the record. (Tr. 20-21, 24-26.) At the conclusion of Mrs. Beck's direct testimony, the ALJ confirmed that, besides Exhibits L and N, Mrs. Beck had no additional exhibits she wanted to move into the record. (Tr. 26.) Then, when Mr. Beck testified, the ALJ reminded him that if he "want[ed] any of the other marked exhibits entered into the record," then he would "have to specify the letter" of the exhibit and explain "why" he wants the exhibit admitted. (Tr. 34.) Mr. Beck acknowledged this instruction from the ALJ, but he never identified any additional exhibits or moved for their admission into the record. (Tr. 34-36.) Therefore, the ALJ correctly disregarded the Complainants' other pre-served exhibits when ruling on the Complaint because such exhibits were not in the record.

Further, the ALJ correctly gave little or no weight to Complainants' Exhibits L and N. Exhibit L was a letter purportedly written by Dr. Kuhns, who was not available for cross-examination at the hearing. (ID at 11-12; Complainants' Exhibit L.) Therefore, the ALJ correctly rejected Exhibit L as "unreliable hearsay evidence." (ID at 12.) Regarding Exhibit N, it was both unreliable hearsay evidence and completely irrelevant to the issues in this case. (Tr.

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[6] It is well-established that the Commission lacks subject matter jurisdiction to interpret and enforce the ADA. *See Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at *69 (Order entered May 3, 2018). As the Commission, held in *Frompovich*:

> [I]t is beyond the jurisdiction of Commission to determine whether the Complainant has a disability or a cause of action under the American with Disabilities Act. See I.D. at 18. If Ms. Frompovich believes that she has a valid ADA claim against PECO, she must work through the federal courts or one of the federal enforcement agencies, which include the Department of Labor, the Equal Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission or the Department of Justice, but not this Commission.

Frompovich, 2018 Pa. PUC LEXIS at *69.

25.) The document, which was not written by the Complainants, was about a federal grant issued to PPL Electric to study smart grid systems in the Harrisburg area. (Complainants' Exhibit N.) The exhibit had nothing to do with the development and deployment of the new AMI meters at issue in this proceeding. (Tr. 25; Complainants' Exhibit N.) Thus, the ALJ properly chose to rely on PPL Electric's overwhelming evidence demonstrating that there is no reliable basis to conclude that the new AMI meters cause, contribute to, or exacerbate adverse health effects, rather than relying on the Complainants' unsupported and irrelevant testimony and exhibits.

2. 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 alleged facts and materials, which are **not** in the record:

- Allegations about their interactions with PPL Electric before the AMI meter was installed (Exceptions, p. 3);
- Claims about their observations when the AMI meter was being installed (Exceptions, pp. 3-4);
- References and summaries of "Pub Med" articles that were supposedly included in the Complainants' pre-served hearing exhibits (Exceptions, pp. 4-5);
- Allegations concerning a National Toxicology Program ("NTP") report (Exceptions, pp. 7-8, 12, 16);
- Claims about their own purported measurements of the transmissions from their AMI meter and the frequency of those transmissions and how the Commission should order an independent test of the AMI meter's transmissions (Exceptions, p. 8);
- Allegations about initiatives in Colorado to promote "EMF Awareness" and education, with comparisons to lack of such initiatives in Pennsylvania (Exceptions, p. 10);

- Claims about the experiences of unnamed persons with electromagnetic fields (Exceptions, pp. 10, 17-18);

- Allegations about a "Ted Talk by Jeromy Johnson" (Exceptions, p. 10);

- Claim that the new AMI meter transmits "more like 83,000 pulses per day" (Exceptions, p. 10);

- Allegations about other states allowing customers to opt-out of AMI meter installations (Exceptions, pp. 11, 14, 17);

- Alleged statements by the U.S. Environmental Protection Agency and the U.S. Department of Interior about the FCC's RF exposure standard (Exceptions, p. 15);

- Claims that the International Agency for Research on Cancer ("IARC") found in 2011 that RF fields are "possibly carcinogenic" (Exceptions, pp. 11, 15)[7];

- Allegation that cellphones and wireless transmissions were never safety tested (Exceptions, p. 15);

- Claims about an "appeal" by scientists in 2015 (Exceptions, pp. 15-16);

- Allegations about an "appeal" by doctors and a letter sent to President Trump regarding the deployment of 5G (Exceptions, pp. 15-16); and

- Allegation that the new AMI meter was installed without notice (Exceptions, pp. 18-19.)[8]

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

[7] PPL Electric observes that Dr. Israel explained in his direct testimony that neither IARC nor the WHO concluded that RF fields from AMI meters cause cancer. (PPL St. No. 2, p. 11.) IARC, which is an agency of the WHO, found that "RF fields from mobile phones were 'possibly carcinogenic' based on what it described as 'limited evidence.'" (PPL St. No. 2, pp. 11-12.) However, IARC "did not find that RF fields from mobile phones were either 'carcinogenic' or even 'probably carcinogenic' under the IARC classification system." (PPL St. No. 2, p. 12.) Further, "[t]he 2011 IARC review did not classify RF fields from smart meters as being carcinogenic, probably carcinogenic, or even possibly carcinogenic." (PPL St. No. 2, p. 12.) Rather, IARC held that "for environmental exposures to RF fields, including RF fields from smart meters, the research was 'inadequate' to reach conclusions about cancer causation." (PPL St. No. 2, p. 12.) "Later in 2011, the WHO, while acknowledging the IARC finding, issued a statement emphasizing that the scientific research has not established the existence of any adverse effects caused by RF fields used for wireless communications." (PPL St. No. 2, p. 12.) "The WHO did not refer to RF fields from smart meters as being carcinogenic, probably carcinogenic or even possibly carcinogenic." (PPL St. No. 2, p. 12.) Therefore, even if this extra-record evidence were properly before the Commission, it should be completely disregarded.

[8] PPL Electric observes that the uncontroverted record evidence shows that the Company issued its written notices to the Complainants pursuant to its AMI Program Communications Plan. (*See* PPL St. No. 3, p. 6.)

cannot introduce new evidence and arguments for the first time at the exceptions stage.[9] "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, the Complainants' extra-record evidence and arguments based thereon were presented for the first time in the Complainants' Exceptions. By waiting until their Exceptions to present this purported evidence and these arguments, 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 and arguments 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 and new arguments.

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

[9] *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); *Arthurs v. Pa. Elec. Co.*, 2019 Pa. PUC LEXIS 197, at *14 (Order entered May 23, 2019) ("This Commission can consider only the evidence in the record before us, and we cannot consider extra record evidence or new arguments presented for the first time in the Exceptions stage of the proceeding.").

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 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 December 3, 2019. (ID at 3.) 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, as well as their new arguments based on such 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 and 3-18 should be denied.

B. REPLIES TO EXCEPTIONS NOS. 4, 16, AND 17: THE ALJ CORRECTLY REJECTED THE COMPLAINANTS' ARGUMENT THAT THEY SHOULD BE ABLE TO "OPT OUT" OF THEIR AMI METER

In their Exceptions, the Complainants argue that they should be able to "opt out" of having an AMI meter installed at their property. (Exceptions, pp. 7, 17-18.) The Complainants

contend that nothing in Act 129 states that the new AMI meters must be installed for all of PPL Electric's customers. (Exceptions, pp. 7, 17-18.) Further, the Complainants aver that Sections 1501 and 1502 of the Public Utility Code, 66 Pa. C.S. §§ 1501 and 1502, should allow them to opt-out of the AMI meter. (Exceptions, pp. 7, 17-18.) The Complainants' arguments should be completely rejected.

The ALJ properly held that the installation of the new AMI meter is required by law. (ID at 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." *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.[10] Therefore, PPL Electric must install the new smart meters for every customer in its service territory, including the Complainants.

[10] *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)).

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 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.*, 2018 Pa. PUC LEXIS 160, at *11-13 (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. Only the General Assembly can amend Act 129 to add an opt-out provision. Notably, although bills have been proposed in the General Assembly to add such an opt-out (see, e.g., House Bill 1564 of 2017-2018 Session), they have never been enacted. 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. The Commission determined that the Company's powerline carrier ("PLC") meters were 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 did not install the new RF Mesh meter on the Complainants' residence in accordance with the Commission-approved deployment schedule,[11] PPL Electric could have violated the Commission's *2010 Smart Meter Order*, *2015 Smart Meter Order*, and *Smart Meter Implementation Order*.

Finally, the Complainants' reliance on Sections 1501 and 1502 of the Public Utility Code is misplaced. As explained previously, the Complainants failed to meet their burden of proof that the installation of the new AMI meter violated Section 1501 of the Public Utility Code. *See* Section II.A.1., *supra*. Additionally, the Company's installation of the AMI meter did not violate Section 1502 of the Public Utility Code.[12] The Company treated the Complainants the

[11] 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 were to be deployed system-wide from 2017 through 2019 with additional actions beyond 2019 to get the full network up and running. (PPL Electric Exhibit DV-1, pp. 3, 32; PPL Electric Statement 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.

[12] Section 1502 of the Public Utility Code states, in pertinent part, that "[n]o public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage." 66 Pa. C.S. § 1502.

same as every other similarly situated customer by installing the new AMI meter. In fact, the Complainants' request for an opt-out of the AMI meter, if granted, would arguably violate Section 1502 because the Complainants would receive an "unreasonable preference or advantage" in service that similarly situated customers do not receive. 66 Pa. C.S. § 1502.

Based on the foregoing, the Commission should deny the Complainants' Exceptions Nos. 4, 16, and 17.

C. REPLY TO EXCEPTION NO. 9 – THE COMPLAINANTS' ARGUMENT THAT THE INSTALLATION OF THE NEW AMI METER VIOLATED THEIR CONSTITUTIONAL RIGHTS IS WITHOUT MERIT

The Complainants also contend that the installation of the new AMI meter violated their constitutional rights. (Exceptions, pp. 10-11.) The Complainants aver that installing the new AMI meter for the Complainants "is irresponsible and errs against [their] Constitutional Rights to a home of [their] choice. (Exceptions, pp. 10-11.) The Complainants' constitutional claims are entirely without merit.

As a preliminary matter, the Complainants fail to state with specificity what constitutional rights they believe have been violated by the AMI meter's installation. Notwithstanding, for there to be a deprivation of any constitutional rights, two elements must be met: (1) "the deprivation must be caused by the exercise of some right or privilege created by the state"; and (2) "the party charged with the deprivation must be a person who may fairly said to be a state actor." *Commonwealth v. Corley*, 491 A.2d 829, 832 (Pa. 1985) (emphasis added) (quoting *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 937 (1982)); *see Commonwealth v. Demor*, 942 A.2d 898, 899-900 (Pa. Super. 2008) (applying principles outlined in *Corley* to Fourth Amendment analysis); *W. Pa. Socialist Workers 1982 Campaign v. Conn. General Life Ins. Co.*, 485 A.2d 1, 5-6 (Pa. Super. 1984) ("[T]he search and seizure provisions of Article 1, section 8, have been held inapplicable to the conduct of private parties.") (citations omitted).

Here, PPL Electric is not a state actor; rather, the Company is a public utility and an electric distribution company regulated by the Commission. In *Jackson v. Metropolitan Edison Co.*, the U.S. Supreme Court found that a fellow Pennsylvania electric utility, *i.e.*, Metropolitan Edison Company, was not a state actor, even though it arguably had "monopoly power" and "provided an essential public service required to be supplied on a reasonably continuous basis." *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351-53 (1974). Therefore, in keeping with the U.S. Supreme Court's holding in *Jackson*, PPL Electric similarly is not a state actor. Moreover, even if the Company were a state actor, the Seventh Circuit Court of Appeals found that the collection of smart meter data by a city-owned public utility was a reasonable warrantless search. *See Naperville Smart Meter Awareness v. City of Naperville*, 900 F.3d 521, 527-29 (7th Cir. 2018). Thus, as the ALJ held, PPL Electric cannot violate the Complainants' constitutional rights by installing the new AMI meter.

For these reasons, the Commission should deny the Complainants' Exception No. 9.

D. REPLIES TO EXCEPTIONS NOS. 2 AND 3 – THE COMPLAINANTS' ISSUES WITH THE "HISTORY OF THE PROCEEDING" SECTION OF THE INITIAL DECISION ARE ENTIRELY WITHOUT MERIT

The Complainants also attempt to fault the ALJ for making certain statements in the "History of the Proceeding" section of the ID. (Exceptions, p. 6.) Specifically, the Complainants contend that the ALJ erred in stating that "[o]n September 20, 2019, the hearing was changed to 9:00 a.m." (Exceptions, p. 6.) The Complainants also allege that the "ALJ did not acknowledge" that the Company's Motion in Limine was filed "four (4) days before the hearing" on "November 5." (Exceptions, p. 6.) Neither of these claims is correct.

First, the ALJ properly stated that on September 20, 2019, the hearing start time was changed from 10:00 a.m. to 9:00 a.m. (ID at 2.) On September 20, 2019, a "Hearing Change Notice" was issued, which changed the hearing start time from 10:00 a.m. to 9:00 a.m. *See Beck*

v. PPL Elec. Utils. Corp., Docket No. C-2018-3002924 (Hearing Change Notice dated Sept. 20, 2019). Thus, the Complainants' allegation that the hearing start time was not changed on that date is without merit.

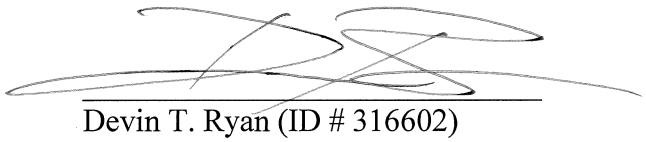
Second, the Complainants' overlook the ALJ's explicit statements in the ID that "[o]n November 1, 2019, PPL filed a Motion in Limine" and that "[t]he Hearing was held as scheduled on November 5, 2019." (ID at 2.) Therefore, the ID did note when the Company's Motion in Limine was filed in relation to the evidentiary hearing.

Based on the foregoing, the Commission should deny the Complainants' Exceptions Nos. 2 and 3.

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 Linda E. and Hubert P. Beck and adopt the Initial Decision without modification.

Respectfully submitted,



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