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February 3, 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: Christie Brzostowski v. PPL Electric Utilities Corporation
Docket No. C-2019-3009320

Dear Secretary Chiavetta:

Enclosed please find the Replies of PPL Electric Utilities Corporation to the Exceptions of Christie Brzostowksi 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 FIRST CLASS MAIL

Christie Brzostowski
1 East Avenue
Mt. Carmel, PA 17851

Date: February 3, 2020

Devin T. Ryan

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Christie Brzostowski,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2019-3009320
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE EXCEPTIONS OF CHRISTIE BRZOSTOWSKI

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Date: February 3, 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 Christie Brzostowski ("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 the Complainant's property. The ALJ correctly held that the Complainant failed to prove by a preponderance of evidence that the installation of the AMI meter would violate 66 Pa. C.S. § 1501. The ALJ also properly determined that there is no provision to "opt-out" of a smart meter installation under Pennsylvania law.

On January 14, 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]

[1] By Secretarial Letter dated January 22, 2020, the deadline for PPL Electric's Replies to these Exceptions was extended until February 3, 2020. Therefore, these Replies are timely filed.

[2] The Complainant failed to number each of her Exceptions as required by the Commission's regulations. *See* 52 Pa. Code § 5.533(b) (stating "[e]ach exception must be numbered"). Therefore, PPL Electric treats her health-related allegations as Exception No. 1, her allegations that the new AMI meter is a fire hazard at Exception No. 2, and her contention that she should be able to opt-out of the AMI meter installation as Exception No. 3. The Complainant's Exceptions also fail to identify and cite the specific portions of the ID with which the Complainant disagrees. *See* 52 Pa. Code § 5.533(b).

II. REPLIES TO EXCEPTIONS

A. REPLIES TO EXCEPTIONS NOS. 1 AND 2 – THE ALJ PROPERLY FOUND THAT THE COMPLAINANT FAILED TO SUSTAIN HER BURDEN OF PROOF THAT INSTALLING THE NEW AMI METER WOULD VIOLATE 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. 1-4.) According to the Complainant, the installation of the new AMI meter could cause adverse health effects because "[t]here were no longitudinal studies" about the impact the AMI meter could have on her health. (Exceptions, p. 1.) The Complainant also contends that she was diagnosed with "Familial Hemiplegic Migraines" and that the evidence presented by PPL Electric was not "representative of people" who have that condition. (Exceptions, p. 1.) However, the Complainant admits that she provided no medical records to support her alleged diagnosis. (Exceptions, p. 2.) Moreover, for the first time in her Exceptions, the Complainant contends that AMI meters "ha[ve] been linked to fires." (Exceptions, p. 2.) Additionally, as alleged support for her arguments, the Complainant attempts to introduce and rely on several items of extra-record evidence in her Exceptions. (Exceptions, pp. 1-6.) 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 10-15.) 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 Complainant[], 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 Complainant's bald assertions that the AMI meter could cause or contribute 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 radio frequency ("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 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.) In fact, based on the Complainant's testimony that she uses her cellphone, on average, for between 30 minutes and one hour per day, Dr. Davis calculated that the level of RF exposure from her cellphone use. (Tr. 32-33.) He testified that over the course of a year, even assuming that she used the cell phone one meter away from her body, it would take "thousands of years, sitting one meter away from the smart meter, to get the same exposure." (Tr. 32-33.) If the Complainant used the cellphone against her head, the level of exposure was even more pronounced. (Tr. 33.) In such a scenario, it would take "many hundreds of thousands of years to get the same exposure" as the Complainant's average cellphone use in a year. (Tr. 33.)

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 11 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 at 10.3 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 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. (*See* ID at 13; PPL St. No. 1, pp. 1-16.) 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. 7-8.) 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, p. 8.) Dr. Israel described a number of the studies in these areas that 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. 8.) 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, p. 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, p. 10.) 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, p. 12.) 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, pp. 13-14.) 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. 14.) 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, pp. 14-15.)

Based on the evidence presented, the ALJ correctly concluded that the "Complainant has failed to show any health concerns such as migraine headaches are likely to be caused, contributed to, or exacerbated by the AMI meter to be installed at her service property." (ID at 11.) In fact, the Complainant failed to present sufficient evidence to "meet the *prima facie* burden of proof to show PPL's service is unsafe or unreasonable." (ID at 11.) Moreover, even if the Complainant did establish a *prima facie* case, 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 she mischaracterizes 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 that the new AMI meter could cause her to experience adverse health effects, based upon her purported experiences with migraines and her claim that there have not been enough long-term studies on AMI meters.[3] (Exceptions, pp. 1-6.) 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

[3] 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.

correctly held that the Complainant did not sustain her burden of proof that the AMI meter's installation would cause, contribute to, or exacerbate adverse health effects.

2. The Complainant Failed to Prove that the New AMI Meter Is Unsafe and Would Cause Fires

The Complainant also contends, for the first time in her Exceptions,[4] that the AMI meters are unsafe and would cause fires. (Exceptions, p. 2.) As alleged support, the Complainant claims that "smart meters have been linked to fires" that occurred in "Saskatchewan and Philadelphia." (Exceptions, p. 2.) The Commission should reject the Complainant's argument entirely.

Unrebutted record evidence demonstrates that the new AMI meters meet the standards issued by the American National Standards Institute ("ANSI") and Underwriters Laboratories ("UL"), specifically ANSI C12.10 and UL 2735. (PPL St. No. 4, p. 8.) Furthermore, when selecting the new AMI meter, safety was a paramount concern of PPL Electric. (PPL St. No. 4, p. 8.) Accordingly, the Company held the new AMI meters to a higher standard than the national standards and even conducted independent testing with a third party of the potential new AMI meters. (PPL St. No. 4, p. 8.) The Landis + Gyr RF Mesh meter selected by the Company was the best performer in all of these tests and met PPL Electric's stringent requirements. (PPL St. No. 4, p. 8.) The testing was mainly designed around the meter baseplate material and its capacity to withstand a temperature equal or greater than 160 degrees Celsius. (PPL St. No. 4, p. 8.)

Additionally, through the Company's testing, PPL Electric was able to determine and simulate the root cause of the vast majority overheating issues. (PPL St. No. 4, p. 9.) It was determined as a loose or broken connection within the customer-owned meter base. (PPL St. No.

[4] This argument should also be rejected because the Complainant improperly raised it for the first time in her Exceptions. *See* Section II.A.3., *infra*.

4, p. 9.) The Company has taken several steps to address potential issues with loose or broken connections, including expanding its inspection criteria and training its installers to perform enhanced inspections that include: (1) checking for signs of wear or detachment on the customer's facility; (2) carefully removing the meter ensuring facility hardware is intact; (3) inspecting the removed meter for signs of pitting or discoloration (an indication of micro-arching); (4) inspecting the meter base's jaws for signs of pitting, discoloration, or separation; and (5) inspecting the meter and meter base generally for loose and broken parts and tightness. (PPL St. No. 4, p. 9.) Moreover, as mentioned previously, PPL Electric tested the AMI meters' baseplate material to ensure they could withstand a temperature equal or greater than 160 degrees Celsius, in case any micro-arcing were to occur. (PPL St. No. 4, p. 9.)

Further, the AMI meters are equipped with software and mechanisms that address issues with overheating. (PPL St. No. 4, p. 10.) For example, the meter's temperature is sent to the Company in 15-minute intervals. (PPL St. No. 4, p. 10.) PPL Electric monitors the meter's temperature data, so it can track the meter's temperature and identify any current issues or problematic trends. (PPL St. No. 4, p. 10.) There also is a heat alarm, so when the temperature of the meter hits an established 85 degree Celsius level, the Company is alerted of the issue. (PPL St. No. 4, p. 10.) When PPL Electric determines there may be an issue or when the heat alarm is triggered, the Company dispatches personnel to investigate. (PPL St. No. 4, p. 10.) In contrast, the Complainant's currently-installed powerline carrier ("PLC") meter does not have these capabilities. (PPL St. No. 4, p. 10.)

Finally, PPL Electric witness Vinciguerra explained that the Company has deployed over 1 million of these meters in its service territory, and none of them has caused any fires. (PPL St. No. 4, p. 10.)

For these reasons, the Complainant failed to prove that the new AMI meter is unsafe and would cause fires.

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

- Allegations about the rarity of familial hemiplegic migraines and the difficulty in diagnosing that condition (Exceptions, p. 1);
- Claims about how the Complainant "control[s] symptoms" she experiences (Exceptions, p. 1);
- Allegation that "several neurologists/specialists have been wrong in [her] case" (Exceptions, p. 1);
- Claims about other products that were endorsed as safe but were allegedly found to be harmful later (Exceptions, pp. 1-2.);
- Allegations about other states that have "opt-outs" for AMI meters (Exceptions, p. 2);
- Alleged statement by the Attorney General of Illinois about AMI meters (Exceptions, p. 2);
- Claims about the "halt[ing]" of AMI meters in New Hampshire and Connecticut (Exceptions, p. 2);
- Argument that the new AMI meter is unsafe because fires allegedly have been linked to smart meters in Saskatchewan and Philadelphia (Exceptions, p. 2);
- Claims about the Complainant's use of a car radio, alleged tinnitus, other electric equipment in her household, and "sleeve on [her] phone to decrease radiation exposure" (Exceptions, p. 2);
- Explanations for her failure to secure her medical records (Exceptions, p. 2);
- Allegations about the Complainant's familial hemiplegic migraines, when her symptoms began, and her diagnosis and treatment (Exceptions, pp. 2-3);

- Claims about "studies suggesting correlations between FHM and dementia" (Exceptions, p. 3);
- Allegations about the medical history and experiences of the Complainant's relatives (Exceptions, p. 3);
- Claims about the Complainant's current primary care physician, health insurance, and accessibility to healthcare (Exceptions, p. 3);
- Alleged screenshot of the Complainant's cellphone "notes" on symptoms dated September 20, 2011 that is attached to her Exceptions (Exceptions, pp. 2-3, 5); and
- "Migraine With Aura Symptoms & Classification Table" attached to her Exceptions (Exceptions, p. 6.)

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 introduce new evidence and arguments 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.").

[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); *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.").

Here, the Complainant's extra-record evidence and arguments based thereon were presented for the first time in the Complainant's Exceptions. By waiting until her Exceptions to present this purported evidence and these arguments, 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 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 Complainant's 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 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 5, 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, as well as her 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").

Based on the foregoing, the Complainant's Exceptions Nos. 1 and 2 should be denied.

B. REPLY TO EXCEPTION NO. 3: THE ALJ CORRECTLY REJECTED THE COMPLAINANT'S ARGUMENT THAT SHE SHOULD BE ABLE TO "OPT OUT" OF THE AMI METER'S INSTALLATION

In her Exceptions, the Complainant argues that she should be able to "opt out" of having an AMI meter installed at her property. (Exceptions, pp. 1-4.) The Complainant concedes that "with the meter there is no exemption offered in Pennsylvania"; however, she alleges that, based on her alleged experiences, she should be able to opt-out of the AMI meter's installation. (Exceptions, pp. 1-4.) The Complainant's argument should be completely rejected.

The ALJ properly held that the installation of the new AMI meter is required by law. (ID at 15-17, 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.[6] 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 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

[6] *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)).

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.

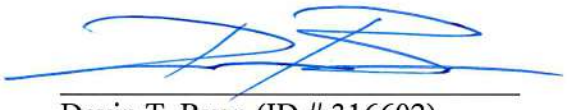
Moreover, PPL Electric must comply with the relevant Commission orders directing the Company to deploy the new AMI meters. The Commission determined that the Company's PLC meters were not compliant with Act 129 and the Commission's *Smart Meter Implementation Order*. *See Petition of PPL Electric Utilities 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, the Company must follow its Smart Meter Plan and install the new AMI meter for the Complainant's property.

For these reasons, the Commission should deny the Complainant's Exception No. 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 Christie Brzostowski and adopt the Initial Decision without modification.

Respectfully submitted,



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