



17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Devin Ryan

dryan@postschell.com
717-612-6052 Direct
717-731-1981 Direct Fax
File #: 167945

April 6, 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

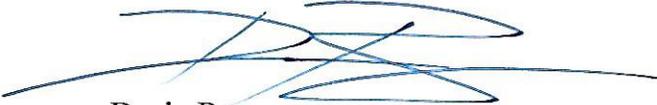
Re: Jeffrey Ulmer v. PPL Electric Utilities Corporation
Docket No. C-2018-3003824

Dear Secretary Chiavetta:

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

Copies are being provided electronically only, as indicated on the Certificate of Service, due to the current closure of all non-life sustaining businesses in the Commonwealth upon direction of Governor Wolf.

Respectfully submitted,



Devin Ryan

DTR/dmc
Enclosures

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

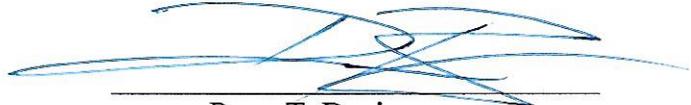
CERTIFICATE OF SERVICE

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

Jeffrey Ulmer
7001 Running Valley Road
Stroudsburg, PA 18360
E-mail:ustudios@aol.com

Date: April 6, 2020



Ryan T. Devin

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey Ulmer,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3003824
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE
EXCEPTIONS OF JEFFREY ULMER**

Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID # 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Phone: 610-774-2599
Fax: 610-774-4102
E-mail: kklock@pplweb.com
mjshafer@pplweb.com

Devin T. Ryan (ID # 316602)
Garrett P. Lent (ID # 321566)
Lindsay A. Berkstresser (ID # 318370)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: dryan@postschell.com
glent@postschell.com
lberkstresser@postschell.com

Curtis S. Renner (ID # 326488)
Watson & Renner
1901 Pennsylvania Avenue, NW
Suite 1005 - ENS
Washington, DC 20006
Phone: 202-737-6302
E-mail: crenner@w-r.com

Date: April 6, 2020

Attorneys for PPL Electric Utilities Corporation

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. REPLIES TO EXCEPTIONS	1
A. REPLY TO EXCEPTION NO. 1 – THE COMPLAINANT WAS AFFORDED MORE THAN DUE PROCESS IN THIS PROCEEDING	1
B. REPLIES TO EXCEPTIONS NOS. 2, 4, AND 5 – THE ALJ PROPERLY FOUND THAT THE COMPLAINANT FAILED TO SUSTAIN HIS BURDEN OF PROOF THAT INSTALLING THE NEW AMI METER WOULD VIOLATE THE PUBLIC UTILITY CODE.....	3
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	3
2. The Complainant’s Allegations about the Expert Opinions and Qualifications of Dr. Christopher Davis and Dr. Mark Israel Are Completely Without Merit and Should Be Rejected	10
C. REPLY TO EXCEPTION NO. 3 – THE ALJ CORRECTLY REJECTED THE COMPLAINANT’S ARGUMENT THAT HE SHOULD BE ABLE TO “OPT OUT” OF THE AMI METER’S INSTALLATION	12
D. REPLIES TO EXCEPTIONS NOS. 2 AND 6 – THE COMPLAINANT’S REMAINING LEGAL ARGUMENTS ARE ENTIRELY WITHOUT MERIT	16
1. The ALJ Correctly Held that the Commission Lacks Jurisdiction to Interpret and Enforce the ADA.....	16
2. The Complainant’s Constitutional Claims Should Be Dismissed	17
3. The Complainant’s Reliance on 66 Pa. C.S. § 1502 Is Misplaced	18
4. Nothing Presented by the Complainant Demonstrates that the Commission Fails to Decide Cases on an “Individual Basis” and on the “Specific Allegations Presented”	19
III. CONCLUSION.....	20

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 Jeffrey Ulmer (“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

II. REPLIES TO EXCEPTIONS

A. REPLY TO EXCEPTION NO. 1 – THE COMPLAINANT WAS AFFORDED MORE THAN DUE PROCESS IN THIS PROCEEDING

The Complaint avers in his Exceptions that the ALJ denied him due process because she failed to issue a briefing schedule and did not “ask [him] about Brief filing.” (Exceptions, p. 2.) According to the Complainant, the dismissal of his Complaint without briefing violates his

¹ PPL Electric notes that the Complainant failed to serve his Exceptions on the Company. On his Certificate of Service, he indicates that he served PPL Electric “VIA E-FILING.” However, the Complainant never emailed his Exceptions to the Company or its counsel. Nonetheless, PPL Electric was able to obtain a copy of the Exceptions and timely file these Replies.

² Some of the Complainant’s Exceptions overlap, while others contain multiple arguments within the same Exception. Accordingly, PPL Electric responds to the Complainant’s Exceptions by subject matter rather than individually by the number of the Exception.

constitutional right to due process. (Exceptions, p. 2.) The Complainant's argument completely lacks merit.

The lack of briefs being submitted by the parties did not deny the Complainant due process. 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).

In this case, the Complainant had a full and fair opportunity to present his case and make his arguments at the evidentiary hearing. Indeed, the Complainant had the opportunity to present his testimony and evidence. Moreover, the Complainant was allowed to give a closing argument to present his legal arguments, including that installing the AMI meter would violate 66 Pa. C.S. § 1501 and that Act 129 does not mandate the installation of smart meters for all customers. The fact that no briefs were submitted is irrelevant. The Complainant obviously had the opportunity to present all of his legal arguments orally at the evidentiary hearing. Therefore, the Complainant undoubtedly was afforded due process in this proceeding.

Further, the ALJ's decision not to issue a briefing schedule was entirely within her discretion. Section 5.483(a) of the Commission's regulations explicitly states that the presiding officer has the authority to, among other things, "regulate the course of the proceeding." 52 Pa. Code § 5.483(a). And even if the Complainant was harmed by the lack of briefing, which he was not, his concern is moot. Through the filing of his Exceptions, the Complainant has been able to

present his written arguments in support of his challenge to the Company's smart meter installation.

For these reasons, the Commission should reject the Complainant's Exception No. 1.

B. REPLIES TO EXCEPTIONS NOS. 2, 4, AND 5 – THE ALJ PROPERLY FOUND THAT THE COMPLAINANT FAILED TO SUSTAIN HIS BURDEN OF PROOF THAT INSTALLING THE NEW AMI METER WOULD VIOLATE THE PUBLIC UTILITY CODE

The Complainant disputes the ALJ's finding that he failed to meet his burden of proof that installing the new AMI meter would violate Section 1501 of the Public Utility Code. (Exceptions, pp. 2-3.) According to the Complainant, the ALJ "erred in not giving credence to my direct testimony and in [his] other filings" that he has experienced "sleep disruptions when PPL installed a smart meter on a pole at the corner of [his] property at the street." (Exceptions, p. 2.) The Complainant also claims there is a link between the Company's installation of AMI meters in his neighborhood and the deaths of two of his animals. (Exceptions, p. 2.) Furthermore, the Complainant argues that the un rebutted expert testimony of Dr. Christopher Davis and Dr. Mark Israel should be disregarded. (Exceptions, p. 11.) He alleges that Dr. Davis's testimony is not credible and that the ALJ erred in accepting Dr. Davis as an expert in Biophysics. (Exceptions, p. 11.) Regarding Dr. Israel, the Complainant argues that his expert testimony is irrelevant because, among other reasons, he never saw the Complainant before the hearing. (Exceptions, p. 11.) 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 12-

17.) 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 15.) 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 15.)

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. 7-19; 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.)

Notably, the Complainant admitted at the hearing that he uses a cell phone to make calls and send text messages and that he primarily uses that cell phone to call his mother. (ID at 4, 13.) In fact, the Complainant testified that he uses his cell phone to make calls about 10 times per week, with individual calls lasting 10 to 15 minutes. (Tr. 26.) Dr. Davis explained that assuming the Complainant uses his cell phone for 10 minutes per day and does not place the cell

phone against his head, the Complainant would have to sit in front of the AMI meter for over 8 years to get the same level of RF exposure as his estimated cell phone use. (Tr. 56-57.)

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 15 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 31.6 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, pp. 8-9.) Further, Dr. Israel provided examples of well-conducted animal studies on RF fields and cancer. (PPL St. No. 2, pp. 9-10.) These studies also did not find any increased incidence in cancer in the RF exposed animals compared to non-exposed animals. (PPL St. No. 2, 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.) Even more recent studies have shown “[t]his relationship between the belief of exposure and the reporting of symptoms” and “has been described as a ‘nocebo effect.’” (PPL St. No. 2, p. 14.) This “nocebo effect” does provide “a reasonable explanation for the presence of symptoms in IEI-EMF and control participants.” (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.)

In addition, Dr. Israel reviewed the research on RF fields and sleep quality. As he explained, there have been a number of studies on whether exposure to RF fields from everyday sources such as cell phones and radio communications towers adversely affects sleep quality.”

(PPL St. No. 2, p. 15.) Dr. Israel testified that the research found no consistent adverse effects on sleep related to RF fields and that it provided no reliable scientific basis to conclude that RF fields from the AMI meters being used by PPL Electric would cause or contribute to adverse effects on sleep quality. (PPL St. No. 2, pp. 15-16.)

Based on the evidence presented, the ALJ correctly concluded that the Complainant's allegations, which were based on his non-expert opinion and largely based on unnamed hearsay materials, were insufficient to sustain his burden of proof. (ID at 13, 15, 22.) Moreover, 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 he failed to sustain his burden of proof.

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 Cnty., 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 him to experience adverse health effects, based upon hearsay materials and his unsupported allegation that the Company’s AMI meters affected animals on his property.³ (Exceptions, p. 2.) Such bald assertions, personal opinions or perceptions do not constitute evidence. *See Mid-Atlantic Power Supply Ass’n v. Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citation omitted). Further, testimony consisting of guesses, conjecture or speculation cannot prove a party’s claims. *Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Dep’t of Highways*, 398 Pa. 518, 159 A.2d 206 (1960). Thus, the ALJ correctly held that the Complainant did not sustain his burden of proof that the AMI meter’s installation would cause, contribute to, or exacerbate adverse health effects.

2. The Complainant’s Allegations about the Expert Opinions and Qualifications of Dr. Christopher Davis and Dr. Mark Israel Are Completely Without Merit and Should Be Rejected

The Complainant’s characterizations of the expert opinions and qualifications of Dr. Christopher Davis and Dr. Mark Israel completely lack merit. 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

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.

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.*

The fact that the experts have had their opinions relied on by the Commission in multiple proceedings does not indicate any type of bias or lack of credibility, as alleged by the Complainant. (*See* Exceptions, p. 11.) To the contrary, it demonstrates that their expert opinions are reliable and demonstrate that there is no reliable medical or scientific basis to conclude that the Company’s new AMI meters cause, contribute to, or exacerbate adverse health effects.

Further, the Complainant never objected at the hearing to Dr. Israel being certified as an expert in his field of expertise. (*See* Tr. 78.) Likewise, the Complainant never objected to Dr. Davis being accepted as an expert in the fields of physics, chemistry, electrical engineering, electromagnetics, bioelectromagnetics, and radio frequency bioelectromagnetics; his only objection was to Dr. Davis testifying as an expert in biophysics, which was correctly overruled. (Tr. 53-54.) Therefore, for any fields of expertise to which the Complainant did not object, the Complainant waived his right to object to the expert witnesses’ qualifications to testify as experts in those fields. And even assuming *arguendo* that he did object, such objections would be entirely unfounded. Uncontroverted record evidence demonstrates that Dr. Davis and Dr. Israel have more than sufficient qualifications, education, and experience to offer expert opinions in their respective fields of expertise. (*See* PPL St. No. 1, pp. 1-5; PPL St. No. 2, pp. 1-7.)

In addition, the Commission should reject the Complainant’s argument that Dr. Davis should not have been accepted as an expert in biophysics. As Dr. Davis testified at the hearing, he has an “[u]ndergraduate degree in Natural Sciences, which includes physics, chemistry, biophysics, crystallography mathematics, and a host of other things.” (Tr. 53-54.) Dr. Davis also has “over 40 years of experiences in research and ha[s] acquired deep knowledge in

(Order entered Feb. 12, 2010); *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Order entered May 3, 2018).

biophysics.” (Tr. 54.) Based on his extensive education, experience, and knowledge in the field of biophysics, the ALJ correctly accepted Dr. Davis as an expert in biophysics.

Moreover, the Complainant argues that Dr. Davis has been testifying on this subject for several decades and specifically points to an AMI meter case filed with the Commission in 2015. (*See* Exceptions, p. 11) (citing *Kreider v. PECO Energy Co.* case where Dr. Davis testified). The Commission’s records show that Dr. Davis testified in that case on March 7, 2016,⁵ and this is consistent with his testimony about his involvement in these cases. More importantly, the Complainant’s argument does not provide any credible basis for ignoring Dr. Davis’s expert testimony, which has been accepted and relied on by the Commission in numerous AMI meter cases. Thus, the ALJ properly relied on the expert opinions offered by Dr. Davis and Dr. Israel in rendering her ID.

Based on the foregoing, the Complainant’s Exceptions Nos. 2, 4, and 5 should be denied.

C. REPLY TO EXCEPTION NO. 3 – THE ALJ CORRECTLY REJECTED THE COMPLAINANT’S ARGUMENT THAT HE SHOULD BE ABLE TO “OPT OUT” OF THE AMI METER’S INSTALLATION

In his Exceptions, the Complainant argues that he should be able to “opt out” of having an AMI meter installed at his property. (Exceptions, pp. 3-11.) According to the Complainant, Act 129 of 2008 does not mandate the installation of the AMI meters for all customers and was passed as an “opt-in” statute. (Exceptions, pp. 3-11.) He avers that the Commission misinterpreted the General Assembly’s intent in finding that the statute requires AMI meters to be installed throughout the electric distribution companies’ (“EDCs”) service territories. (Exceptions, pp. 3-11.) As alleged support, the Complainant relies on the statements of a few

⁵ *See Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655, p. (Order entered May 23, 2017) (noting that the evidentiary hearing was “held on March 7, 2016, as scheduled”).

Pennsylvania legislators about the statute. (Exceptions, pp. 5-6.) 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-

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)).

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 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.

The Complainant also erroneously contends that the Company should be allowed to grant him an opt-out of the smart meter installation because the Commission’s *Smart Meter Implementation Order* is not legally binding. (See Exceptions, p. 10.) The Order cited by the Complainant is the Commission’s June 9, 2010 Order approving the initial Smart Meter Deployment Plan for Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), and Pennsylvania Power Company (“Penn Power”) at Docket No. M-2009-2123950. See *Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co. and Pennsylvania Power Co. for Approval of Smart Meter Technology Procurement and Installation Plan*, 2010 Pa. PUC LEXIS 963 (Order entered June 9, 2010). In his Exceptions, the Complainant omits the Commission’s statement in that Order that “EDCs are not free to ignore” the *Smart Meter Implementation Order*. *Id.* at *17 (Order entered June 9, 2010). Therefore, the Complainant’s reliance on that Order is misplaced.

Additionally, the Commission’s *2015 Smart Meter Order*, which requires the installation of smart meters for all of PPL Electric’s customers, is legally binding on the Company. Indeed, Section 501(c) of the Public Utility Code requires “[e]very public utility, its officers, agents, and employees” to “observe, obey, and comply” with the Commission’s orders. 66 Pa. C.S. § 501(c); see also *id.* § 701 (stating that formal complaints can be filed for non-compliance with a Commission order). Thus, PPL Electric must follow its Smart Meter Plan and the

Commission's Orders and must install the new AMI meters for all of the Company's customers, including the Complainant.

For these reasons, the Commission should deny the Complainant's Exception No. 3.

D. REPLIES TO EXCEPTIONS NOS. 2 AND 6 – THE COMPLAINANT'S REMAINING LEGAL ARGUMENTS ARE ENTIRELY WITHOUT MERIT

The Complainant raises other legal arguments in his Exceptions. Specifically, the Complainant contends that denying him an "opt-out" of the AMI meter installation would violate the Americans with Disabilities Act ("ADA"), the U.S. Constitution, the Pennsylvania Constitution, and Section 1502 of the Public Utility Code, 66 Pa. C.S. § 1502. (Exceptions, pp. 2-3.) He further contends that the ALJ "erred when she stated that the PUC decides cases on an individual basis and the specific allegations presented" because, among other reasons, nobody "has ever won an accommodation from the deployment of a smart meter on their property." (Exceptions, p. 11.) The Complainant's arguments should be soundly rejected.

1. The ALJ Correctly Held that the Commission Lacks Jurisdiction to Interpret and Enforce the ADA

The ALJ properly rejected the Complainant's arguments based on the ADA because the Commission lacks jurisdiction to interpret and enforce that federal law. (ID at 17.) As a creature of statute, the Commission "has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication." *Feingold v. Bell*, 383 A.2d 791, 794 (Pa. 1977) (citations omitted). Nothing in the Pennsylvania Public Utility Code grants the Commission the ability to interpret and enforce the ADA. In fact, it is well-established that the Commission lacks subject matter jurisdiction to interpret and enforce that federal law. *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. Therefore, the applicable federal agencies and courts have jurisdiction to interpret and enforce the ADA, not the Commission.

2. The Complainant's Constitutional Claims Should Be Dismissed

The Complainant argues in his Exceptions that the installation of the new AMI meter would violate his rights under the U.S. Constitution and the Pennsylvania Constitution. (Exceptions, p. 2.) However, he fails to identify with specificity which rights he believes would be violated. (*See* Exceptions, p. 2.) These unsubstantiated and unspecific claims should be dismissed by the Commission.

For there to be a deprivation of 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. 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, PPL Electric cannot violate the Complainants’ constitutional rights by installing the new AMI meter.

3. The Complainant’s Reliance on 66 Pa. C.S. § 1502 Is Misplaced

The Company’s installation of the new AMI meter would not violate Section 1502 of the Public Utility Code, as alleged by the Complainant. The Company would be treating the Complainant the same as every other similarly situated customer by installing the smart meter. Indeed, PPL Electric witness Durkin testified that the Company must install the new AMI meters for all of its customers pursuant to its Commission-approved Smart Meter Plan. (PPL St. No. 4, p. 6.) Further, even assuming *arguendo* that an opt-out of the AMI meter’s installation could be granted, nothing presented by the Complainant would justify granting him that relief. As explained previously, the Complainant wholly failed to demonstrate that the installation of the new AMI meter would cause, contribute to, or exacerbate adverse health effects. *See* Section II.B, *supra*. Thus, the Complainant’s request for an opt-out of the smart meter, if granted, would arguably violate Section 1502 because the Complainant would receive an “unreasonable preference or advantage” in service that similarly situated customers do not receive. 66 Pa. C.S. § 1502.’

4. Nothing Presented by the Complainant Demonstrates that the Commission Fails to Decide Cases on an “Individual Basis” and on the “Specific Allegations Presented”

The Complainant also alleges that the Commission fails to decide cases on an “individual basis” and on the “specific allegations presented.” (Exceptions, p. 11.) His only alleged support is that the Commission has not granted “an accommodation from the deployment of a smart meter” in other cases and that several of those cases involved the same attorneys and expert witnesses. (Exceptions, p. 11.)

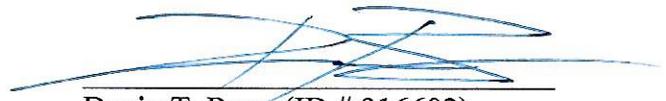
Nothing in the record or in any Commission orders demonstrates that the Commission fails to thoroughly review the records of every case before it and render its decisions accordingly. The fact that no customer has received an “opt-out” of an AMI meter installation to date merely reflects: (1) the Commission lacks the authority to grant an “opt-out” of an AMI meter installation under Pennsylvania law; and (2) the allegations that the new AMI meters cause, contribute to, or exacerbate adverse health effects are entirely unfounded.

Based on the foregoing, the Commission should deny the Complainant’s Exceptions Nos. 2 and 6.

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 Jeffrey Ulmer and adopt the Initial Decision without modification.

Respectfully submitted,



Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID # 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Phone: 610-774-2599
Fax: 610-774-4102
E-mail: kklock@pplweb.com
mjshafer@pplweb.com

Devin T. Ryan (ID # 316602)
Garrett P. Lent (ID # 321566)
Lindsay A. Berkstresser (ID # 318370)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: dryan@postschell.com
glent@postschell.com
lberkstresser@postschell.com

Curtis S. Renner (ID # 326488)
Watson & Renner
1901 Pennsylvania Avenue, NW
Suite 1005 - ENS
Washington, DC 20006
Phone: 202-737-6302
E-mail: crenner@w-r.com

Date: April 6, 2020

Attorneys for PPL Electric Utilities Corporation