

June 12, 2020

VIA ELECTRONIC FILING

Office of the Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: **Docket Nos. F-2019-3008809 and F-2019-3008832**

Enclosed for filing are *Exceptions to ALJ Order Granting Respondent's Motion in Limine (Corrected)* in the above-referenced proceeding. The phrase, "Motion for Sanctions" in the previous filing, twice was changed to correctly read: "Motion in Limine." Per instructions of Legal Assistant, Melissa Maloney, of the PA PUC Secretary's Bureau, this is a re-filing of the documents previously efiled separately with Confirmation Numbers 1884893 and 1884899.

Respectfully submitted,



Handwritten signatures of John Holder and Janet Holder in blue ink, positioned above a horizontal line.

John Holder, Janet Holder

Exceptions to ALJ Order Granting Respondent's Motion in Limine

Complainants hereby file these *Exceptions to ALJ Order Granting Respondent's Motion in Limine* for the following reasons:

1. Many of the Complainants' exhibits constitute directly relevant and credible evidence of reasonable probative value in accordance with item III, *Evidentiary Standards and Criteria* as stated in the *Complainants' Motion in Opposition to Respondent PPL Electric Utilities' Motion in Limine* and reproduced infra:

III. Evidentiary Standards and Criteria

Evidence is relevant if it tends to establish facts in issue. *LeRoi v. Pa. State Civil Service Commission*, 382 A.2d 1260 (Pa. Cmwlth. 1978).

“Commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and **all relevant evidence of reasonably probative value may be received.**” 2 Pa. C.S. § 505.

The Pennsylvania Public Utility Commission, a Commonwealth agency, is not bound by technical rules of evidence at agency hearings and therefore may receive all relevant evidence of reasonably probative value.

If the evidence is relevant to the issues before the agency and of reasonable probative value, the agency may receive it. 2 Pa. C.S. § 505.

Hearsay evidence may generally be received and considered during an administrative proceeding. See *A.Y. v. Commonwealth, Dep't of Pub. Welfare, Allegheny County Children & Youth Serv.*, 537 Pa. 116, 641 A.2d 1148, 1150 (1994).

Under the relaxed evidentiary standards applicable to administrative proceedings, as provided under 2 Pa. C.S. § 505, it is well-settled that simple hearsay evidence, which otherwise would be inadmissible at a trial, **generally may be received into evidence and considered during an administrative proceeding.** *D'Alessandro v. Pennsylvania State Police*, 937 A.2d 404, 411, 594 Pa. 500, 512 (2007).

Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 n.9 (Pa. Cmwlth. 2008)

Substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established.” *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008).

In order for evidence relied upon in an administrative proceeding to be considered “substantial evidence,” the “. . . information admitted into evidence must have sufficient indicia of reliability . . .” *Gibson v. W.C.A.B.*, 861 A.2d 938, 944, 580 Pa. 470, 480 (Pa. 2004).

To satisfy the requirement of authenticating or identifying an item of evidence ... “the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Pa. R.E., Rule 901.

Evidence which is corroborated by any competent evidence in the record must be given its “natural probative” effect.

2. The exhibits of the Complainants in the proceedings of the instant case have been submitted for due consideration as evidence in an *administrative hearing* and not in a civil trial. It is not necessary that the Complainants meet the higher technical standards of evidence that would be required in a civil tort case.
3. Complainants' Exhibit Nos. 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J-1, 1J-2, 13, 45A, 45B, 45H, and 45J constitute legally credible, competent, and substantial evidence in accordance with Pa.R.E. 804(b)(1):

Rule 804(b). The Exceptions

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had – or, in a civil case, whose predecessor in interest had - an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

4. EXHIBIT 1B, *Expert Report of Andrew A. Marino*, has been given in prior AMI smart meter cases before the Pennsylvania Public Utility Commission.

5. EXHIBITS 1C through 1H all are pre-filed expert testimonies in MPUC Docket No. 2011-00262, specifically a smart meter case in which the predecessor parties in interest had an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

These exhibits specifically were identified in the Complainants' *Amended Complaint* and in the *Complainants' Motion in Opposition to Respondent, PPL Electric Utilities' Motion in Limine* as:

EXHIBIT 1C - Prefiled Testimony of Dr. Lennart Hardell, MD, PhD
EXHIBIT 1D - Prefiled Testimony of Dr. Jerry L. Phillips, PhD
EXHIBIT 1E - Prefiled Testimony of Dr. Dariusz Leszczynski, DSc, PhD
EXHIBIT 1F - Prefiled Testimony of Dr. De-Kun Li, MD, PhD, MPH
EXHIBIT 1G - Prefiled Testimony of Dr. Richard H. Conrad, PhD
EXHIBIT 1H - Prefiled Testimony of Mr. Lloyd Morgan, BSEE

6. EXHIBITS 45A, 45B, and 45H all are expert testimonial declarations in U.S. District Court Civil Action No. 3:11-cv-00739-MO, a case involving allegations of adverse health effects of exposure to radiofrequency radiation and in which the predecessor parties in interest had an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

These exhibits specifically were identified in the Complainants' *Amended Complaint* and in the *Complainants' Motion in Opposition to Respondent, PPL Electric Utilities' Motion in Limine* as:

EXHIBIT 45A - Declaration of Dr. Andrew Goldsworthy, BSc, PhD
EXHIBIT 45B - Amended Declaration of Dr. David O. Carpenter, MD
EXHIBIT 45H - Reply of Dr. David O. Carpenter, MD, to Dr. David Savitz, PhD

7. EXHIBIT 45J contains the *Rebuttal Testimony of Dr. Magda Havas* before the State of Iowa Utilities Board, Docket No. SPU-2018-0007, a case involving allegations of adverse health effects of exposure to radiofrequency radiation and in which the predecessor parties in interest had an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

8. Dr. Martin Blank, PhD, the declarant in Exhibits 1J-1, 1J-2, and 34A is deceased. His testimonies in these exhibits constitute and can be received as credible, competent and substantial evidence under the provisions of Pa.R.E. 804(a)(4) which states:

Rule 804. Exceptions to the Rule Against Hearsay – When the Declarant is Unavailable as a Witness

(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

...

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness;

9. Because Dr. Ronald B. Herberman, MD, a declarant in Exhibit 13 is deceased, his testimony in this exhibit constitutes and can be received as credible, competent and substantial evidence under the provisions of Pa.R.E. 804(a)(4).

10. Dr. David O. Carpenter, MD, a/the declarant in Exhibits 1I, 13, 29C-15, 45B, and 45H, was accepted as an expert witness in the federal Civil Action No. 4:15-CV-40116-TSH, "G ... v. the Fay School," 282 F.Supp.3d 381 (2017), involving allegations of adverse health effects of exposure to radiofrequency radiation.

11. On September 5, 2008, Dr. Julius Knapp, then-Director of the Office of Engineering & Technology of the Federal Communications Commission testified before the U.S. House of Representatives with regard to the health effects of cell phone radiation and stated the following:

"The FCC staff is not sufficiently qualified to speak with authority to the science of health effects of RF absorption in the bodies—body." (**EXHIBIT 13** at the 31:58 minute-mark.)

and

"The FCC doesn't have the expertise to evaluate whether the standard is appropriate protection level for the cases that were discussed here." (**EXHIBIT 13** at the 1:46:23 hour-mark.)

This statement is profoundly relevant to the Complainants' case and EXHIBIT 13, which also includes testimonies by Dr. Ronald Herberman and Dr. David Carpenter, definitely warrants being received and admitted into the evidentiary record.

12. EXHIBITS 4A and 4B are documents issued by officials of the U.S. Environmental Protection Agency which state unequivocally and conclusively that the FCC's RF exposure guidelines are protective only from effects arising from a thermal mechanism and that these guidelines do NOT apply to chronic, nonthermal exposure situations. That is, the FCC guidelines do NOT protect human beings from harm from all possible mechanisms.

13. EXHIBIT 4H - *Handbook of Biological Effects of Electromagnetic Fields, Third Edition: Biological and Medical Aspects of Electromagnetic Fields* is a definitive scientific textbook, the contents of which shows that "the evidence for weak (nonthermal) EMF bioeffects is overwhelming," and **the science is settled beyond reasonable doubt** that there are in fact mechanisms of interaction other than thermal heating of tissues which do exist and occur in biological systems.

14. EXHIBITS 22A and 23 are official documents of the WHO/IARC and the U.S. National Toxicology program of the National Institutes of Health, respectively, and contain specifically relevant statements of scientific findings. These documents have been brought forth and have been addressed during testimony given in prior proceedings of the Pennsylvania Public Utility Commission regarding the issues of radiofrequency radiation and smart meter safety.

15. EXHIBITS 1L, 6G, 7, 16, 17B, 17C, 17E, 19B, 20C, 23, 24L, 24N, 25, and 44G are documents consisting of true and correct copies of complete, peer-reviewed scientific research studies with clear conclusions that can be readily understood by the non-expert. The findings of these studies demonstrate why it is urgently incumbent upon the State itself to eliminate conflicts of interest and provide the necessary means of evaluating their scientific merit in relation to the health and safety of its citizens. To simply dismiss these studies without close scrutiny and regard them as inadmissible evidence is egregious and unconscionable.

16. **EXHIBIT 38E**, filed with the PA PUC Office of the Secretary on January 23, 2020 as "Additional Evidence," is NOT hearsay evidence. Complainant John Holder participated with his son-in-law at the latter's home in taking the meter readings detecting the frequency of transmission pulses of the Landis+Gyr Focus AXR-SD AMI smart meter installed on the home by Respondent, PPL Electric Utilities. This exhibit constitutes a demonstration in which the RF Meter in the video displays at least thirteen (13) distinct transmission pulses or bursts over a continuous 3-minute time interval starting from the 1-minute mark and ending at the 4-minute mark. This rate of pulsed transmissions averages to more than four (4) transmissions per minute. The corresponding total transmission time per day of radiofrequency transmissions by PPL's AMI smart meter in this case would be at least four (4) times the total transmission time per day calculated from the information provided by PPL to Complainants in the company's answers to Complainants' Interrogatories, Set I. The serial number of the meter in the video is clearly visible and the property where this meter is installed thus can be readily identified by the Respondent.

17. Accordingly, the ALJ's order granting the Respondent's Motion in Limine unfairly enjoins Complainants from bringing forth directly relevant and credible evidence of reasonable probative value and therefore severely and unjustifiably prejudices the Complainants' case and denies the Complainants full and proper protection of their rights to due process.

WHEREFORE, for the preceding reasons and the reasons previously expressed in the *Complainants' Motion in Opposition to Respondent, PPL Electric Utilities' Motion in Limine*, the Complainants respectfully request that the order issued by the ALJ granting Respondent, PPL Electric Utilities' Motion in Limine be, at least in part, reversed.

Respectfully submitted,



Dated: June 12, 2020

John and Janet Holder, Complainants

CERTIFICATE OF SERVICE

We hereby certify that true and correct copies of *Exceptions to ALJ Order Granting Respondent's Motion in Limine (Corrected)* have 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):

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Date: June 12, 2020


