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June 15, 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: Thomas Maslar v. PPL Electric Utilities Corporation**  
**Docket No. C-2018-3003075**

Dear Secretary Chiavetta:

Enclosed for filing is the Answer of PPL Electric Utilities Corporation to the Petition for Reconsideration and Rehearing filed by Thomas Maslar ("Complainant"), in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR  
Enclosures

cc: Honorable Elizabeth Barnes (*w/enclosures*)  
Office of Special Assistants (*via Email*)  
Certificate of Service

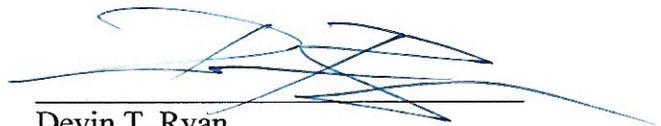
**CERTIFICATE OF SERVICE**

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**

Thomas Maslar  
3556 Apollo Court  
Orefield, PA 18069

Date: June 15, 2020



Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas Maslar,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3003075
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION TO  
THE PETITION FOR RECONSIDERATION AND REHEARING OF  
THOMAS MASLAR**

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Date: June 15, 2020

Attorneys for PPL Electric Utilities Corporation

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PPL Electric Utilities Corporation (“PPL Electric” or the “Company”), pursuant to 52 Pa. Code §§ 5.61 and 5.572, hereby respectfully submits this Answer to the Petition for Reconsideration and Rehearing filed by Thomas Maslar (“Complainant”) on June 4, 2020. In his Petition, the Complainant requests reconsideration and rehearing because, among other things, he allegedly has “new evidence” not considered by the Pennsylvania Public Utility Commission (“Commission”) in its May 21, 2020 Order dismissing his Complaint (“*Final Order*”).

As explained herein, the Complainant’s request for reconsideration and rehearing is without merit. The Complainant’s Petition re-raises arguments that have already been considered and rejected by the Commission in its *Final Order*. Moreover, the Complainant fails to demonstrate that the “new evidence” he wants to present came into existence after the record closed. In fact, based on the Complainant’s Petition, many, if not all, of these referenced documents constituting his “new evidence” existed prior to the record closing on June 20, 2019. Moreover, the Complainant’s Petition alleges that the Company’s automated metering infrastructure (“AMI”) meter is a cybersecurity risk. This argument should have been, but was not, previously raised in his Exceptions. Accordingly, the cybersecurity issue has been waived. Therefore, the Petition fails to meet the Commission’s standard for reconsideration and rehearing and should be denied.

## **I. INTRODUCTION AND BACKGROUND**

PPL Electric is a public utility that provides electric distribution and provider of last resort services in Pennsylvania subject to the regulatory jurisdiction of the Commission. PPL Electric furnishes electric distribution, transmission, and provider of last resort electric supply services to approximately 1.4 million customers throughout its certificated service territory,

which includes all or portions of 29 counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania.

On June 28, 2018, PPL Electric was served with the Formal Complaint filed by the Complainant.

On July 18, 2018, PPL Electric filed its Answer to the Complaint.

On July 25, 2018, a notice was issued scheduling a telephonic prehearing conference for August 29, 2018.

On August 9, 2018, a Prehearing Conference Order was issued.

The prehearing conference was held as scheduled on August 29, 2018.

On November 10, 2018, the Complainant filed an Amended Complaint, which was served on PPL Electric on November 21, 2018.

On December 3, 2018, PPL Electric filed its Answer to the Amended Complaint.

On December 18, 2018, the Complainant filed a Petition requesting a continuance of the evidentiary hearing scheduled for February 8, 2019, as well as an extension of time to submit his statements, reports, rebuttal testimony, and exhibits.

Administrative Law Judge Elizabeth H. Barnes (“ALJ”) granted this request.

On February 7, 2019, a Notice was issued rescheduling the in-person evidentiary hearing for May 28, 2019. Also, a Second Prehearing Order was issued, which set forth deadlines of March 15, 2019, and April 19, 2019, for the Complainant and PPL Electric, respectively, to serve their hearing exhibits, statements, reports, and rebuttal testimony. The Second Prehearing Order also stated that witnesses could appear by telephone at the in-person hearing.

On February 11, 2019, the Complainant requested another continuance because he objected to PPL Electric’s witnesses being allowed to appear by telephone.

On February 21, 2019, PPL Electric filed a letter objecting to the Complainant's February 11, 2019 request for continuance.

On February 28, 2019, the ALJ issued an Order denying the Complainant's February 11, 2019 request for continuance.

On April 19, 2019, PPL Electric served its written testimony and exhibits, in accordance with the Second Prehearing Order.

On May 23, 2019, the Complainant requested a continuance again.

After PPL Electric objected to the Complainant's third request for continuance, the ALJ denied the Complainant's request.

The Complainant never served any exhibits or written testimony before the evidentiary hearing, as required by the Second Prehearing Order.

On May 28, 2019, the evidentiary hearing was held as scheduled. At the hearing, the ALJ sustained PPL Electric's objections to the Complainant's hearing exhibits because the Complainant failed to provide them in advance of the hearing as required by the Second Prehearing Order.

On July 12, 2019, the ALJ's Initial Decision dismissing the Complaint was issued.

On August 1, 2019, the Complainant filed Exceptions to the Initial Decision.

On August 12, 2019, PPL Electric filed Replies to the Exceptions.

On May 21, 2020, the Commission entered its *Final Order* denying the Complainant's Exceptions, adopting the Initial Decision, and dismissing the Complaint.

The Complainant thereafter filed the instant Petition on June 4, 2020.

For the reasons explained below, the Complainant's Petition should be denied.

## II. LEGAL STANDARDS

The Commission's standard for reviewing petitions for rehearing<sup>1</sup> and reconsideration following final orders is set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559, 1982 Pa. PUC LEXIS 4 (Opinion and Order Upon Reconsideration dated Dec. 17, 1982) (emphasis added):

A petition for rehearing, under the provisions of 66 Pa C.S. § 703(f), properly must seek the reopening of the record for the introduction of additional evidence of some sort. As grounds therefore it must allege newly discovered evidence, not discoverable though the exercise of due diligence prior to the close of the record. *Public Utility Commission v Reading Co.* (1975) 21 Pa Cmwlth 334, 338, 345 A2d 311; *Mobilphone v Pennsylvania Pub. Utility Commission* (1975) 24 Pa Cmwlth 243, 355 A2d 611; *Abramson v Pennsylvania Pub. Utility Commission* (1980) 489 Pa 267, 414 A2d 60.

...

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that “[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them....” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Consequently, for a petition to warrant rehearing and reconsideration by the Commission, it must demonstrate new and novel arguments that were raised below by the petitioner, but not previously considered by the Commission. The Commission has cautioned that the last portion of the operative language of the *Duick* standard -- “by the Commission” -- focuses on the

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<sup>1</sup> See *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co. and West Penn Power Co. for Approval of their Default Serv. Programs*, 2012 Pa. PUC LEXIS 1533, at \*4-5 (Order entered Sept. 27, 2012) (explaining that the *Duick* standard applies to “petitions for rehearing, reargument, and clarification” as well).

deliberations of the Commission, not the arguments of the parties. *See Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597, p. 3 (Order entered May 22, 2014). Therefore, a petition for reconsideration cannot be used to raise new arguments or issues that should have been, but were not, previously raised.

A petition seeking relief under the *Duick* standard may properly raise any matter designed to convince the Commission that it should exercise its discretion to rescind or amend a prior order in whole or part. Importantly, however, the *Duick* standard does not permit a petitioner to raise issues and arguments considered and decided below such that the petitioner obtains a second opportunity to argue properly resolved matters. *Id.* Further, as explained by the Pennsylvania Supreme Court, petitions for reconsideration of a final agency order may only be granted judiciously and under appropriate circumstances because such action results in the disturbance of final agency orders. *City of Pittsburgh v. Pa. Dep't of Transp.*, 490 Pa. 264, 416 A.2d 461 (1980).

As explained below, the Complainant's Petition clearly fails to satisfy the standards for granting rehearing, reconsideration, or both.

### **III. ARGUMENT**

#### **A. THE COMPLAINANT'S REQUEST FOR RECONSIDERATION AND REHEARING SHOULD BE DENIED**

In his Petition, the Complainant claims that the Commission should grant reconsideration and rehearing to allow him to present: (1) "new evidence" that allegedly demonstrates adverse health effects results from exposure to non-thermal radio frequency ("RF") fields; and (2) evidence that the ALJ excluded at the evidentiary hearing. *See* Petition, pp. 1-4. According to the Complainant, his "new evidence" did not "arise until after the close of [his] formal hearing,"

and his additional issues “arose after the conclusion of [his] formal complaint hearing.” *Id.*, p. 1. The Complainant further references a pending Commonwealth Court case (*i.e.*, *Haas v. Pa. PUC*, Docket No. 658 MD 2019) but provides no arguments or explanation concerning it. *See id.*, p. 3. The Complainant also alleges that the AMI meter is a cybersecurity risk and that he has “acquired new information” about this topic. *Id.*, p. 3. The Complainant’s Petition is without merit and should be denied.

First, the Complainant completely fails to meet the *Duick* standard for reconsideration. In his Petition, the Complainant tries to re-raise allegations that the Commission already considered and denied in its *Final Order*, namely that: (1) the new AMI meter will cause, contribute to, or exacerbate adverse health effects, that an AMI meter presents cybersecurity concerns, and that an AMI meter should not be installed at his property; and (2) the ALJ erred in sustaining PPL Electric’s objections to his exhibits, which he failed to serve on the Company before the evidentiary hearing, as required by the Second Prehearing Order and the Commission’s regulations. *See* Exceptions, p. 1; Petition, pp. 2-4. As explained previously, the *Duick* standard does not permit the Complainant to raise issues and arguments considered and decided below such that he obtains a second opportunity to argue properly resolved matters. *See Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597, p. 3.

In this case, the Commission rejected the Complainant’s claim that the installation of the new AMI meter would violate Section 1501 of the Public Utility Code based upon his health-related claims. *See Final Order*, pp. 14-21. Moreover, the Commission held in its *Final Order* that the ALJ properly sustained PPL Electric’s objections to the Complainant’s exhibits because: (1) the Complainant failed to serve those exhibits on the Company before the evidentiary hearing, as required by the Second Prehearing Order; (2) the Complainant’s exhibits were

hearsay documents that did not fall within a recognized exception to the hearsay rule; and (3) even if those exhibits were admitted, they would not have constituted substantial evidence to support a finding of fact. *See Final Order*, pp. 16-17. Therefore, the Complainant's allegations that the new AMI meter will cause, contribute to, and exacerbate adverse health effects and that the ALJ erred in sustaining PPL Electric's objections to his exhibits completely fail to meet the *Duick* standard for reconsideration.<sup>2</sup>

Second, the Complainant's failure to present evidence that was in existence and readily prior to the close of the evidentiary record does not meet the *Duick* standard for reconsideration. Importantly, the Commission in *Duick* explain that, where a petition for rehearing seeks reopening of the record or reconsideration based upon new evidence, the petition "must allege [the] newly discovered evidence...[was] not discoverable though the exercise of due diligence prior to the close of the record." *Duick*, at 559.

Here, the Complainant cites various unnamed scientific studies, a November 2018, National Toxicology Program "Fact Sheet," three additional websites (*i.e.*, links to [www.EMFScientist.org](http://www.EMFScientist.org), [www.babysafeproject.org](http://www.babysafeproject.org), and the Federal Communications Commission), a case pending before the Commonwealth Court, and undisclosed "new information on the vulnerability of hackers to the electric grid," as additional evidence in support of his claims. Petition, pp. 2-3. The Complainant fails to establish that this evidence was not discoverable prior to the close of the record on June 20, 2019. *See Initial Decision*, p. 3 (explaining that "the record closed on June 20, 2019"). In addition, the Complainant's reliance on documents dated prior to the close of the record and publicly accessible hyperlinks betrays any such claim. Reconsideration is not another opportunity for the Complainant to attempt to

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<sup>2</sup> To the extent that these arguments are considered, PPL Electric incorporates its response to these arguments in its Replies to Exceptions as though fully set forth herein. *See PPL Electric Replies to Exceptions*, pp. 1-8.

introduce additional evidence that he could have discovered prior to the close of record and sought to introduce at hearing. Thus, the Complainant has failed to demonstrate to meet the *Duick* standard for reconsideration.

Third, the Complainant failed to preserve his argument that the Company's AMI meter raises cybersecurity concerns. (*See* Petition, p. 3.) Nothing in the Complainant's Exceptions even mentions cybersecurity, privacy concerns, or hacking. (*See* Exceptions, pp. 1-2.) Therefore, due to his failure to raise any arguments concerning cybersecurity in his Exceptions, the Complainant's cybersecurity issue was waived. *See Merritt v. Duquesne Light Co.*, 2011 Pa. PUC LEXIS 1197, at \*9-10 (Order entered Mar. 31, 2011) (finding that "the Complainant waived his arguments by failing to raise them in Exceptions").

Even assuming *arguendo* that the Commission were to consider the cybersecurity issue raised in the Complainant's Petition, the Complainant's argument wholly lacks merit. As the ALJ found, the Complainant failed to establish that the Company's AMI meter raises data privacy concerns. *See* Initial Decision, pp. 23-24. Specifically, PPL Electric "filed a detailed AMI Customer Privacy Policy, which sets forth the data PPL will collect through the new smart meter, the steps the Company will take to protect the data, and the ways in which PPL will use the data." *Id.*, p. 24. Further, the Company "uses firewalls to prevent anyone from obtaining unauthorized access to the AMI network," and the "[c]ustomer data is encrypted to make the data readable to only PPL personnel who can decode the encryption." *Id.* Additionally, the Company's "cybersecurity and data privacy policies are consistent with the national standards for the industry." *Id.* As a result, the ALJ correctly relied on PPL Electric's evidence and rejected the Complainant's unfounded cybersecurity allegations.

For these reasons, the Complainant's Petition for Reconsideration and Rehearing is without merit and should be denied.

#### IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission deny the Petition for Reconsideration and Rehearing filed by Thomas Maslar in its entirety.

Respectfully submitted,



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