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June 22, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: John and Janet Holder & June Maculesky v. PPL Electric Utilities Corporation
Docket No. F-2019-3008809 and F-2019-3008832

Dear Secretary Chiavetta:

Enclosed for filing is the Reply of PPL Electric Utilities Corporation to the Procedurally Improper Exception of John And Janet Holder And June Maculesky to the May 26, 2020 Order Granting Motion In Limine in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read 'Garrett P. Lent', is written in a cursive style.

Garrett P. Lent

GPL/dmc
Enclosures

cc: Honorable Elizabeth Barnes (*w/enclosures*)
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).

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Date: June 22, 2020



Garrett P. Lent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John and Janet Holder and June	:	
Maculesky,	:	
	:	
Complainants,	:	
	:	Docket No. F-2019-3008809
v.	:	Docket No. F-2019-3008832
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**REPLY OF PPL ELECTRIC UTILITIES CORPORATION
TO THE PROCEDURALLY IMPROPER EXCEPTION OF
JOHN AND JANET HOLDER AND JUNE MACULESKY
TO THE MAY 26, 2020 ORDER GRANTING MOTION IN LIMINE**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) files this Reply to the Exception to ALJ Order Granting Respondent’s Motion in Limine (“Improper Exception”) filed at the Pennsylvania Public Utility Commission (“Commission”) by John and Janet Holder and June Maculesky (“Complainants”) on June 12, 2020.¹ Although the Complainants cite to no Commission regulation that permits them to submit the Improper Exception, which should result in this filing being summarily denied, PPL Electric submits that the Complainants’ Improper Exception is substantively meritless and should be denied.

In support thereof, PPL Electric submits as follows:

¹ Although the Complainants initially served the Improper Exception on June 10, 2020, they re-filed and re-served the Improper Exception to Sanctions pursuant to instructions from the Commission’s Secretary’s Bureau on June 12, 2020.

I. REPLY TO IMPROPER EXCEPTION

A. THE IMPROPER EXCEPTION IS PROCEDURALLY IMPROPER.

The Complainants submitted their filing as “exceptions” to the Order Granting PPL Electric Utilities Corporation’s Motion in Limine and Motion for Sanctions issued by the Administrative Law Judge Elizabeth H. Barnes (the “ALJ”) on May 26, 2020 (“Order Granting Motion in Limine”), which granted PPL Electric’s Motion in Limine and Motion for Sanctions (“PPL Motion”).² However, the Complainants cite to no provision of the Public Utility Code, the Commission regulations, or any applicable Commission order that permits the filing of exceptions to an ALJ’s order governing pre-hearing matters.

Importantly, the procedure for the filing of exceptions and replies to exceptions are governed by Section 5.533 of the Commission’s regulations. 52 Pa. Code § 5.533 (Procedure to except to initial, tentative and recommended decisions). Importantly, Section 5.533(a) states: “exceptions may be filed by a party and served within 20 days after the initial, tentative or recommended decision is issued unless some other exception period is provided. Exceptions may not be filed with respect to an interlocutory decision.” 52 Pa. Code § 5.533(a) (emphasis added).

The ALJ’s Order Granting Motion in Limine is neither an initial, a tentative nor a recommended decision to which exceptions may be filed. Rather, it is an interlocutory order that disposes of certain pre-hearing matters—*i.e.* excluding certain of the Complainants’ proposed

² The PPL Motion sought a ruling from the ALJ that excluded the vast majority of the Complainants’ proposed hearing exhibits because the exhibits: are hearsay and not subject to a hearsay exception under the Pennsylvania Rules of Evidence; are irrelevant; have not and cannot be authenticated by the Complainants; constitute statements by individuals the Complainants’ failed to disclose as witnesses in discovery; are inherently unreliable; and/or violate the best evidence rule. In addition, it sought to exclude the Complainants’ exhibits also because the Complainants have admitted in their discovery responses that they are not calling an expert witness and, therefore, they should not be allowed to introduce and rely upon these numerous hearsay exhibits. Furthermore, the PPL Motion sought sanctions against the Complainants due to the Complainants’ willful and egregious choice to inundate PPL Electric, the ALJ and the Commission with thousands of pages of inadmissible documents and hundreds of hours of inadmissible videos, despite their failure to fully and completely respond to basic discovery requests from PPL Electric that were necessary to determine the validity of the Complainants’ alleged health concerns.

exhibits and granting PPL Electric's request for sanctions. As such, the Complainants' exception is procedurally improper and should be summarily denied.

B. THE COMPLAINANTS' IMPROPER EXCEPTION IS WITHOUT MERIT.

In addition to its procedural infirmities, the Improper Exception is meritless. Therein, the Complainants attempt to re-hash the same hearsay arguments which were denied by the Order Granting Motion in Limine and seek a second bite at the apple. Furthermore, even if the Complainants could properly show that the exhibits identified in the Improper Exception satisfy an exception to the rule against hearsay, which they cannot, each proposed exhibit is also inadmissible on the additional grounds identified below and/or in PPL Electric's Motion in Limine.

As an initial matter, the Complainants' assertion that the Commission is not bound by the same rules of evidence applicable to a civil trial is misplaced. *See* Improper Exception ¶¶ 1-2. “[W]hile the strict rules of evidence have been relaxed in agency hearings under the Commonwealth's Administrative Agency Law, *see* 2 Pa. C.S. § 505, there has not been an abandonment of all rules.” *Catherine J. Frompovich v. PECO Energy Company*, Docket No. C-2015-2474602, 2018 Pa. PUC LEXIS 160, at *23 (Opinion Order entered May 3, 2018) (emphasis added) (“*Frompovich*”); *see also Ronald and Beverly Dawes v. Pennsylvania Gas and Electric*, Docket No. F-2013-2361655 (Initial Decision issued January 14, 2014) (related to authentication per Pa. R.E. Rules 901 of a third-party recording of a customer call and application of Best Evidence Rule, Pa. R.E, Rules 1001 and 1002). Therefore, “for evidence relied upon in an administrative proceeding to be considered competent, the evidence must be authenticated and follow the applicable hearsay rules.” *Frompovich*, at *23.

The Complainants failed to demonstrate in their Answer to PPL Electric’s Motion in Limine that any of the identified hearsay evidence satisfies an exception to the rule against hearsay. As such, the ALJ’s Order Granting Motion in Limine properly excluded all exhibits identified as hearsay. The Improper Exception similarly fails to overcome the rule against hearsay and the Complainants have, once again, failed to demonstrate that any exhibit identified in the Improper Exception is admissible.

The Complainants first argue that that Exhibit Nos. 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J-1, 1J-2, 13, 45A, 45B, 45H and 45J are admissible under Pa. R.E. 804(b)(1), the “former testimony” exception to the rule against hearsay. *See* Improper Exception ¶¶ 3-8. Pa. R.E. 804(b)(1) states that “former testimony” does not constitute inadmissible hearsay if it is 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.

However, the Complainants ignore the genesis of Pa. R.E. 804. In order for the exceptions set forth in Rule 804 to apply, the Complainants must first demonstrate that the declarant (i.e., each person responsible for making the hearsay statement(s)) is unavailable as a witness in this proceeding. Pa. R.E. 804(b) (“The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness...” (emphasis added)). Rule 804(a) sets forth the criteria for being unavailable. Pa. R.E. 804(a). The Complainants have failed to demonstrate

that each declarant³ responsible for the hearsay statements at issue in Exhibit Nos. 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J-1, 1J-2, 13, 45A, 45B, 45H and 45J is unavailable.

In addition, even if the Complainants could demonstrate that the declarant(s) in each of these exhibits is unavailable, the Complainants' attempt to shoehorn Exhibit Nos. 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J-1, 1J-2, 13, 45A, 45B, 45H and 45J into this exception should be denied. None of these exhibits can satisfy subpart (B) of Rule 804(b)(1) because PPL Electric was neither a part to any of the proceedings in which the hearsay statements were made, nor are any of the parties in those proceedings PPL Electric's "predecessor in interest."

More specifically:

- Exhibit 1B – The “Expert Report of Andrew A. Marino” is a report prepared with regard to PECO Energy Company. PECO Energy Company is neither PPL Electric nor PPL Electric’s predecessor in interest and PPL Electric was not a party to that proceeding.
- Exhibits 1C through 1H – These proposed exhibits constitute various “prefiled testimonies” filed before the Maine Public Utilities Commission. PPL Electric was not a party to those proceedings, nor was its “predecessor in interest” a party to those proceedings.
- Exhibits 45A, 45B and 45H – These proposed exhibits constitute various declaration filed before the United States District Court for the District of Oregon in *AHM v. Portland Public Schools*, Action No. 3:11-cv-00739-MO. PPL Electric was not a party to those proceedings, nor was its “predecessor in interest” a party to those proceedings.
- Exhibit 45J – This proposed exhibit is prior testimony before the State of Iowa Utilities Board, Docket No. SPU-2018-0007. PPL Electric was not a party to this proceeding, nor was its “predecessor in interest” a party to this proceeding.

³ PPL Electric notes that these exhibits also contained “hearsay within hearsay,” which PPL Electric objected to as a part of its Motion in Limine. Although the Complainants attempt to resolve part of the hearsay contained in these documents, by identifying specific declarants, they have failed to resolve the hearsay within the declarants’ statements (i.e., the declarant’s statements or quotations of other documents, reports, analyses or studies contained in each of the proposed exhibits). In addition, the Complainants ignore the fact that certain of these documents contain statements by declarants in addition to those that they have identified in the Improper Exception (e.g., Exhibit 34A contains statements made by individuals other than Martin Blank) and the Complainants have not demonstrated those declarants are unavailable and/or that their statements are admissible under an exception to the rule against hearsay.

- Exhibits IJ-1, IJ-2 and 34A – These proposed exhibits are prior written testimonies offered by Martin Blank before the Commonwealth of Virginia State Corporation Commission (Exhibit IJ-1), the New Jersey Board of Public Utilities (Exhibit IJ-2) and a letter to the City of Los Angeles, the Los Angeles Mayor, the City Council and City Attorney (Exhibit 34A). PPL Electric was not a party to those proceedings, nor was its “predecessor in interest” a party to those proceedings.
- Exhibit 13 – A video .mp4 file purporting to show testimony before the United States House Oversight Subcommittee on Domestic Policy on the Health Effects of Cell Phones Use, dated September 25, 2008, recorded by C-SPAN 2. PPL Electric was not a party to those proceedings, nor was its “predecessor in interest” a party to those proceedings.

The Complainants have completely failed to demonstrate that any of these exhibits satisfy the prior testimony exception and the ALJ’s Order Granting Motion in Limine excluding these exhibits as inadmissible hearsay should be affirmed.

PPL Electric notes that the Complainants further assert that Exhibits IJ-1, IJ-2 and 34A (with respect to the statements of Martin Blank) and Exhibit 13 (with respect to the statements of Dr. Ronald B. Herberman) satisfy an exception to the hearsay rule because each of the identified declarants (i.e., Mr. Blank and Dr. Herberman) are deceased. *See* Improper Exception ¶¶ 8-9 (citing Pa. R.E. 804(a)(4)). Although Mr. Blank and Dr. Herberman may satisfy the criteria for being unavailable, the Complainants have failed to otherwise identify an applicable hearsay exception for these exhibits. Furthermore, even if they did not constitute hearsay, PPL Electric notes that these exhibits are also inadmissible on the following grounds, each of which was identified in its Motion in Limine:

- Exhibit IJ-1 – Direct Testimony and Exhibits of Professor Martin Blank, Va. State Corp. Comm’n Case No PUE 2009-00043.

Objections: (1) hearsay opinions about medical and scientific issues by individual not available for cross examination in this case; (2) medical opinions by witness not identified as expert in discovery and not admitted to testify; (3) irrelevance as to lack of probative value for the facts and conclusions contained therein to the Complainants’ claims in this proceeding; (4) authenticity – the proposed exhibit is a composite of Mr. Blank’s testimony and other exhibits, which the Complainants cannot themselves authenticate; (5) authenticity – the witness is deceased and is

not available to authenticate the accuracy of the factual statements and opinions contained therein.

- Exhibit 1J-2 – Testimony of Martin Blank, Ph.D., N.J. Bd. Of Pub. Util. Docket No. EM09010035.

Objections: (1) hearsay opinions about medical and scientific issues by individual not available for cross examination in this case; (2) medical opinions by witness not identified as expert in discovery and not admitted to testify; (3) irrelevance as to lack of probative value for the facts and conclusions contained therein to the Complainants' claims in this proceeding; (4) authenticity – the proposed exhibit is a composite of Mr. Blank's testimony and other exhibits, which the Complainants cannot themselves authenticate; (5) authenticity – the witness is deceased and is not available to authenticate the accuracy of the factual statements and opinions contained therein.

- Exhibit 13 – A video .mp4 file purporting to show testimony before the United States House Oversight Subcommittee on Domestic Policy on the Health Effects of Cell Phones Use, dated September 25, 2008, recorded by C-SPAN 2.

Objections: (1) hearsay opinions about medical and scientific issues by individual not available for cross examination in this case; (2) proposed medical opinions from a purported medical source (*e.g.*, David Carpenter) not identified in discovery and not admitted to testify; (3) proposed medical opinions from non-medical sources not identified in discovery and not admitted to testify (*e.g.*, Ellie Marks); (4) proposed medical opinions from medical sources not identified in discovery and not admitted to testify (*e.g.*, Dr. Robert Hoover, and Dr. Ronald Herberman); (5) relevance – the proposed exhibit does not addresses RF fields from the AMI meters being used by PPL Electric; (6) authenticity – none of the witnesses are being presented to authenticate the accuracy of the factual statements, non-scientific and/or scientific opinions in the testimony; (7) inherent unreliability based on the Commission's prior rejection of Dr. Carpenter's testimony as unreliable in *Myers v. PPL Electric Utilities Corporation*, Docket No. C-2017-2620710 (Order entered Aug. 29, 2019).

- Exhibit 34A– Declaration of Martin Blank, PhD. Columbia University. Dated January 28, 2016.

Objections: (1) hearsay opinions about medical and scientific issues by individual not available for cross examination in this case; (2) hearsay within hearsay where the document presents quotes from or opinions of third-parties or other cited documents; (3) medical opinions by witness not identified as expert in discovery and not admitted to testify; (4) relevance – the proposed exhibit does not addresses RF fields from the AMI meters being used by PPL Electric; (5) authenticity – the document's author is not being presented to authenticate the accuracy of the factual statements and/or scientific opinions in the document; (6) authenticity - the exhibit includes materials other than the document identified as

an exhibit by the Complainants (*see, e.g.*, pages 15-634; *see also* Complaint, pp. 217-218), which appear to have been appended to the declaration; (7) authenticity – the witness is deceased and is not available to authenticate the accuracy of the factual statements and opinions contained therein; (8) cumulative – the proposed exhibit includes certain additional documents which have already been separately submitted as exhibits (*see, e.g.*, pages 25-32 which is the same as Exhibit 32B).

As such, even if the Complainants could demonstrate that these exhibits satisfied an exception to the rule against hearsay, which they have not, each of these exhibits is inadmissible on several other grounds.

The Complainants also argue that Exhibits 1I, 13, 29C-15, 45B, and 45H (*i.e.*, statements by Dr. David O. Carpenter) are admissible because Dr. Carpenter “was accepted as a witness in the federal Civil Action No. 4:15-CV-40116-TSH, ‘G ... v. the Fay School.’” Improper Exception ¶ 10. However, this argument fails to recognize that the Complainants have not identified, and do not intend to call, Dr. Carpenter as a witness in this proceeding. Furthermore, even if these exhibits did not constitute hearsay, PPL Electric notes that these exhibits are also inadmissible on the following grounds, each of which was identified in its Motion in Limine:

- Exhibit 1I – Qualifications and Direct Testimony of David O. Carpenter, M.D., Mich. PSC Case No U-15768.

Objections: (1) hearsay opinions about medical and scientific issues by individual not available for cross examination in this case; (2) medical opinions by witness not identified as expert in discovery and not admitted to testify; (3) inherent unreliability based on the Commission’s prior rejection of Dr. Carpenter’s testimony as unreliable in *Myers v. PPL Electric Utilities Corporation*, Docket No. C-2017-2620710 (Order entered Aug. 29, 2019); (4) irrelevance as to lack of probative value for the facts and conclusions contained therein to the Complainants’ claims in this proceeding; (5) authenticity – the proposed exhibit is a composite of Dr. Carpenter’s testimony and other exhibits, which the Complainants cannot themselves authenticate.

- Exhibit 13 – A video .mp4 file purporting to show testimony before the United States House Oversight Subcommittee on Domestic Policy on the Health Effects of Cell Phones Use, dated September 25, 2008, recorded by C-SPAN 2.

Objections: (1) hearsay opinions about medical and scientific issues by individual not available for cross examination in this case; (2) proposed medical opinions

from a purported medical source (e.g., David Carpenter) not identified in discovery and not admitted to testify; (3) proposed medical opinions from non-medical sources not identified in discovery and not admitted to testify (e.g., Ellie Marks); (4) proposed medical opinions from medical sources not identified in discovery and not admitted to testify (e.g., Dr. Robert Hoover, and Dr. Ronald Herberman); (5) relevance – the proposed exhibit does not address RF fields from the AMI meters being used by PPL Electric; (6) authenticity – none of the witnesses are being presented to authenticate the accuracy of the factual statements, non-scientific and/or scientific opinions in the testimony; (7) inherent unreliability based on the Commission’s prior rejection of Dr. Carpenter’s testimony as unreliable in *Myers v. PPL Electric Utilities Corporation*, Docket No. C-2017-2620710 (Order entered Aug. 29, 2019).

- Exhibit 29C-15 – Expert Report of David O. Carpenter regarding, “The State of Scientific Research as to Whether Advanced Meters Transmitting by Radiofrequencies, As Proposed in the Present Case, May Constitute A Risk Of Serious Or Irreversible Damage to Health.” *Authorization of an Investment by Hydro-Quebec Distribution – Advanced Metering Project Phase I*, Province of Quebec, District of Montreal Energy Board Docket No. R-3770-2011.

Objections: (1) hearsay opinions on medical and scientific issues; (2) hearsay within hearsay where the document presents quotes from or opinions of third-parties or other cited documents; (3) proposed medical opinions from sources not identified in discovery and not admitted to testify; (4) irrelevance as to lack of specific probative value for the facts and conclusions contained therein to the Complainants’ claims in this proceeding; (5) authenticity – the document’s author is not being presented to authenticate the accuracy of the factual statements and/or scientific opinions in the document; (6) inherent unreliability based on the Commission’s prior rejection of Dr. Carpenter’s testimony as unreliable in *Myers v. PPL Electric Utilities Corporation*, Docket No. C-2017-2620710 (Order entered Aug. 29, 2019).

- Exhibit 45B – Amended Declaration of Dr. David O. Carpenter MD. *AHM, et al. v. Portland Public Schools*, Civil Action No. 3:11-cv-00739-MO, U.S. District Court, District of Oregon. Dated December 20, 2011.

Objections: (1) hearsay opinions about scientific and medical issues; (2) hearsay within hearsay where the exhibit presents quotes from or opinions of third-parties or other documents; (3) proposed medical opinions from source not identified in discovery and not admitted to testify; (4) relevance – the proposed exhibit does not address RF fields from the AMI meters being used by PPL Electric; (5) authenticity – the document’s author is not being presented to authenticate the document; (6) inherent unreliability – based on the Commission’s prior rejection of Dr. Carpenter’s testimony as unreliable in *Myers v. PPL Electric Utilities Corporation*, Docket No. C-2017-2620710 (Order entered Aug. 29, 2019).

- Exhibit 45H – Reply of Dr. David O. Carpenter MD to the Declaration of David Savitz, Ph.D. AHM, et al. v. Portland Public Schools, Civil Action No. 3:11-cv-00739-MO, U.S. District Court, District of Oregon. Dated January 19, 2012.

Objections: (1) hearsay opinions about scientific and medical issues; (2) hearsay within hearsay where the exhibit presents quotes from or opinions of third-parties or other documents; (3) proposed medical opinions from source not identified in discovery and not admitted to testify; (4) relevance – the proposed exhibit does not addresses RF fields from the AMI meters being used by PPL Electric; (5) authenticity – the document’s author is not being presented to authenticate the document; (6) inherent unreliability – based on the Commission’s prior rejection of Dr. Carpenter’s testimony as unreliable in *Myers v. PPL Electric Utilities Corporation*, Docket No. C-2017-2620710 (Order entered Aug. 29, 2019).

As such, the Complainants’ argument that these exhibits are admissible should be denied.

Next, the Complainants identified two additional, specific statements from Exhibit 13 that they assert are admissible and “profoundly relevant.”⁴ Improper Exception ¶ 11. In addition to constituting inadmissible hearsay (and hearsay within hearsay), these statements cannot be admitted because they are proposed medical opinions from medical sources not identified in discovery and not admitted to testify (e.g., Dr. Julius Knapp) and the statements are irrelevant to the RF fields from the AMI meters being used by PPL Electric.

The Complainants then argue that Exhibits 4A and 4B are admissible, but do not identify which, if any, of PPL Electric’s objections to which they are responding. *See* Improper Exception ¶ 12. However, each of these documents is inadmissible on the grounds previously identified by PPL Electric in its Motion in Limine, which are reproduced below:

- Exhibit 4A – Copies of Letters from the United States Environmental Protection Agency to Janet Newton (President of the EMR Network) dated March 8, 2002 and July 16, 2002.

Objections: (1) hearsay opinions about medical and scientific issues by individual not available for cross examination in this case; (2) medical opinions by witness not identified as expert in discovery and not admitted to testify; (3) expert

⁴ PPL Electric notes that it has explained why this Exhibit constitutes inadmissible hearsay, and is inadmissible on several other grounds, above. PPL Electric specific responds to the Complainants’ assertion that Exhibit 13 is relevant here.

opinions by witness not identified as expert in discovery and not admitted to testify; and (4) irrelevance as to lack of probative value for the facts and conclusions contained therein to the Complainants' claims in this proceeding.

- Exhibit 4B – Copies of Letter and Comments from Magro T. Oge, Director, Office of Radiation and Indoor Air of the United States Environmental Protection Agency to the Federal Communications Commission regarding FCC-93-142.

Objections: (1) hearsay; (2) expert opinions by witness not identified as expert in discovery and not admitted to testify; and (4) irrelevance as to lack of probative value for the facts and conclusions contained therein to the Complainants' claims in this proceeding.

As with other exhibits, Exhibits 4A and 4B constitute inadmissible hearsay and the declarants have not been identified as expert witnesses for the Complainants in this proceeding. Therefore, Exhibits 4A and 4B are inadmissible.

Complainants further assert that Exhibit 4H should be admitted because it is a scientific textbook. Improper Exception ¶ 13. Complainants similarly assert Exhibits 1L, 6G, 7, 16, 17B, 17C, 17E, 19B, 20C, 23, 24L, 24N, 25, and 44G are admissible as scientific reports or articles. Improper Exception ¶ 15. However, Pennsylvania law does not recognize the learned treatise exception to the rule against hearsay. *See* Pa. R.E. 803(18). Statements in Learned Treatises, Periodicals, or Pamphlets (Not Adopted); *see also* *Majdic v. Cincinnati Machine Co.*, 370 Pa. Super. 611, 537 A.2d 334 (Pa. Super. 1988). As such, the ALJ properly excluded these documents as inadmissible hearsay.

The Complainants also contend that Exhibits 22A and 23 are admissible because they “have been brought forth and have been addressed during testimony given in prior proceedings” before the Commission. Improper Exception ¶ 14. However, the treatment of these documents in other proceedings, under different factual circumstances, has no bearing on their treatment in this case. Furthermore, the Complainants have not overcome any of the numerous grounds on which PPL Electric objected to these exhibits in its Motion in Limine.

Finally, the Complainants assert that Exhibit 38E is not hearsay evidence because it is a video recorded by one of the Complainants at his residence. *See* Improper Exception ¶ 16. Regardless of whether the individuals filmed make out of court statements that the Complainants intend to offer for the truth of the matter asserted, PPL Electric also properly objected to this Exhibit as being inherently unreliable.⁵ Importantly, the proposed exhibit purportedly depicts a “demonstration” outside of a laboratory setting, which has not been peer-reviewed or replicated. Furthermore, Complainant John Holder has not been certified as an expert witness in this proceeding and, therefore, is not able to offer opinion testimony based upon or regarding this exhibit.

For these reasons, and the reasons more fully explained above, the Improper Exception should be denied in its entirety, and the exhibits identified therein should remain excluded from the record.

⁵ *See Blum v. Merrell Dow Pharms., Inc.*, 705 A.2d 1314, 1325 (Pa. Super. 1997) (excluding expert testimony because the “analysis was so flawed as to render [the expert’s] conclusions unreliable and therefore inadmissible”), *affirmed*, 764 A.2d 1 (Pa. 2000).

II. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Exception to ALJ Order Granting Respondent's Motion in Limine of John and Janet Holder and June Maculesky be denied in its entirety and the Order Granting PPL Electric Utilities Corporation's Motion in Limine and Motion for Sanctions issued by the Administrative Law Judge Elizabeth H. Barnes be affirmed in its entirety.

Respectfully submitted,



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Date: June 22, 2020

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