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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 Sanctions in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Sincerely,

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 SANCTIONS**

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 for Sanctions (“Improper Exception to Sanctions”) 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 to Sanctions, which should result in this filing being summarily denied, PPL Electric submits that the Complainants’ Improper Exception to Sanctions 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 TO SANCTIONS

A. THE IMPROPER EXCEPTION TO SANCTIONS 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 Sanctions”), 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 Sanctions 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 exhibits and

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.

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 TO SANCTIONS IS WITHOUT MERIT.

In addition to its procedural infirmities, the Improper Exception to Sanctions is meritless. The Complainants raise four arguments against the Order Granting Sanctions. PPL Electric responds to each of these arguments below and, for the reasons more fully explained herein, submits that the Complainants' Improper Exception to Sanctions should be denied.

First, the Complainants' assert that the ALJ's finding "presupposes some manner of special foreknowledge" and improperly grants and inference that the Complainants have not and will not experience any medical conditions before the occurrence of the action they assert will cause such conditions (*i.e.* the installation of a PPL Electric AMI meter). Improper Exceptions to Sanctions ¶¶ 2-4. However, the information sought by PPL Electric is, in fact, necessary to determine whether the installation of a PPL Electric AMI meter will cause or contribute to any adverse medical conditions or biological effects that the Complainants assert they may experience.

Without medical records documenting the health and medical conditions of the Complainants before a PPL Electric AMI meter is installed there is no reasonable basis upon which the Commission could determine that any health or medical conditions the Complainants assert they may exhibit after a PPL Electric AMI meter is installed were caused by the AMI meter. The pre-installation medical records are essential to determining whether any post-installation condition asserted by the Complainants could have actually been caused by the AMI meter; without such records there is no evidence of a "status quo" prior to the installation of the AMI meter with respect to the Complainants' health and medical conditions. As explained in the

PPL Motion, the Complainants' failure to provide these records (*i.e.*, "full and complete responses to PPL Electric's discovery requests seeking medical records and/or diagnoses related to the adverse health effects that the Complainants allege will be caused or exacerbated by PPL Electric's smart meters") deprives PPL Electric of a reasonable opportunity to rebut the Complainants' assertions. PPL Motion ¶ 45 (emphasis added).

Second, the Complainants argue that the ALJ's decision "erroneously implies that the Complainants' personal medical records and present state of health are somehow relevant" despite their admission that "they have no existing medically adverse health conditions." Improper Exceptions to Sanctions ¶¶ 5-8. Relatedly, the Complainants attempt to restate objections that the applicable discovery request sought immaterial information, was unduly burdensome and not reasonably calculated to lead to the discovery of relevant or "material" evidence or facts. Improper Exceptions to Sanctions ¶ 9.

As explained by PPL Electric with respect to the Complainants' first argument, above, their medical records are highly relevant, if not essential, to the preparation of PPL Electric's defense and response to the Amended Complaint. Moreover, providing their medical records is not an unduly burdensome request and the Complainants offer no support for this assertion.

Third, the Complainants claim that their medical records are "**NOT in any way material**" to the instant cause because they are not relevant to the question of whether biological or adverse health effects "**could occur or could be entirely caused in the future.**" Improper Exceptions to Sanctions ¶ 8 (bolded and capitalized emphasis in original). As explained above, these records are relevant, material and essential to PPL Electric's defense in this proceeding and by failing to provide them the Complainants deprived PPL Electric of a reasonable opportunity to rebut the Complainants' assertions.

Furthermore, the Complainants' emphasis on things that "could occur or could be entirely caused in the future" demonstrate that their claims are baseless and speculative. Importantly, a customer cannot establish a case merely by stating his personal beliefs or by posing questions about what may be without offering concrete proof. *See Robert W. Ellis v. PECO Energy Company*, Docket No. C-2011-2256958, 2013 Pa. PUC LEXIS 333, at *19 (Initial Decision dated May 17, 2013), *becoming final without modification* (Order entered July 3, 2013). In addition, "Mere bald assertions, personal opinions or perceptions do not constitute evidence." *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (Pa. 1987); *The Mid-Atlantic Power Supply Association v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. Ct. 2000). Complainants' assertions suggest that they will not and cannot produce admissible evidence demonstrating things that could or may happen in the future. If that is the case, then they cannot carry their burden of proof, regardless of the ruling in the Order Granting Sanctions.

Finally, the Complainants assert that the Order Granting Sanctions denies them due process. Improper Exceptions to Sanctions ¶ 10. 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). Moreover, Section 332(c) of the Public Utility Code entitles every party to, among other things, "submit rebuttal evidence" and "conduct such cross-examination as may be required for a full and true disclosure of the facts." 66 Pa. C.S. § 332(c).

The Complainants have been afforded due process in these proceedings. They have had the opportunity to amend their Complaint, submit and receive discovery, and file, and respond to, motions. They have also been provided due process with specific respect to PPL Electric's request for sanctions; they submitted an Answer in Opposition to PPL's Motion on April 21, 2020. In addition, the Complainants will have the opportunity to submit evidence in support of their claims at hearing.

However, the Complainants must also abide by the procedural rules of the Commission. The Order Granting Sanctions was issued due to the Complainants' failure to provide full and complete responses to PPL Electric's discovery requests. As such, and for the reasons more fully explained in PPL's Motion, the Complainants' failure to fully participate in the discovery process warranted the adverse inference that Complainants' refusal to produce such records establishes, as a matter of fact, that the Complainants have not experienced and will not experience any medical conditions or issues from the installation of PPL Electric's AMI meter.

Therefore, and for the reasons more fully explained herein and in PPL's Motion, PPL Electric demonstrated that the sanction granted by the Order Granting Sanction was appropriate and the Complainants' Improper Exceptions to Sanction should be denied.

II. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Exception to ALJ Order Granting Respondent's Motion for Sanctions 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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