

File #: 167945

September 14, 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 Answer of PPL Electric Utilities Corporation to the “Motion to Remove Sanctions” and the “Motion Requesting Permission to File Amended Main Brief and Motion in Opposition to Respondent’s Motion for Sanctions” filed by John and Janet Holder and June Maculesky on August 25, 2020, in the above-captioned proceedings. Copies will be provided as indicated on the Certificate of Service.

Sincerely,



Garrett P. Lent

GPL
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).

VIA ELECTRONIC MAIL

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Date: September 14, 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.	:	

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION
TO THE MOTION TO REMOVE SANCTIONS AND
MOTION TO FILE AMENDED BRIEF OF
JOHN AND JANET HOLDER AND JUNE MACULESKY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

Pursuant to Section 5.103(c) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.103(c), PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) files this Answer to the “Motion to Remove Sanctions” and the “Motion Requesting Permission to File Amended Main Brief and Motion in Opposition to Respondent’s Motion for Sanctions” (collectively “Post-Hearing Motions”) filed by John and Janet Holder and June Maculesky (“Complainants”) on August 25, 2020.¹ In the Post-Hearing Motions, the Complainants—yet again—improperly attempt to relitigate the prior May 26, 2020 Order Granting PPL Electric Utilities Corporation’s Motion in Limine and Motion for Sanctions

¹ The Complainants served a corrected version of the Motion Requesting Permission to File Amended Main Brief and Motion in Opposition to Respondent’s Motion for Sanctions on August 28, 2020.

(“Order Granting Sanctions”) issued by the Administrative Law Judge Elizabeth H. Barnes (the “ALJ”) and additionally seek to file an Amended Main Brief² in this matter.

In support thereof, PPL Electric submits as follows:

I. BACKGROUND

1. The procedural history of this matter has been set forth in several filings before the Commission. PPL Electric provides the following additional background with respect to the Complainants’ Post-Hearing Motions.

2. The Complainants’ Motion to Remove sanctions is an improper third bite at the apple regarding PPL Electric’s PPL Electric’s Motion in Limine and Motion for Sanctions (“PPL Motion”), which was filed in this proceeding on February 28, 2020.

3. The Complainants filed an Answer to the PPL Motion on April 21, 2020.

4. Thereafter, the ALJ granted the PPL Motion and issued the Order Granting Sanctions.

5. The Complainants then filed an “Exception to ALJ Order Granting Respondent’s Motion for Sanctions” on June 12, 2020.³

6. PPL Electric filed a Reply to the Complainants’ Exception to ALJ Order Granting Respondent’s Motion for Sanctions on June 22, 2020 (“PPL Reply”).

7. The ALJ issued an Order Denying Exceptions on June 23, 2020.

8. The Complainants then filed a Main Brief on July 31, 2020.

9. PPL Electric filed a Motion to Strike the Complainants’ Main Brief on August 5, 2020.

² The Complainants prematurely filed a Main Brief on July 31, 2020, prior to the hearings scheduled in this matter. PPL Electric filed a Motion to Strike the Complainant’s Main Brief on August 5, 2020, which was subsequently granted at the hearing.

³ 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.

10. A telephonic evidentiary hearing was held in this matter on August 6, 2020. The ALJ granted PPL Electric's Motion to Strike. Tr. 8. In addition, the ALJ provided both the Complainants' and PPL Electric the opportunity to present closing arguments, and both parties presented closing arguments. *See* Tr. 47-55.

11. The Complainants filed the instant Post-Hearing Motions on August 25, 2020.

II. ANSWER TO THE MOTION TO REMOVE SANCTIONS

12. PPL Electric makes reference to and incorporates the prior PPL Reply, which was filed with the Commission on June 22, 2020.

13. The Complainants' Motion to Remove Sanctions should be rejected.

14. None of the reasons offered by the Complainants in the instant Post-Hearing Motions warrant—yet again—revisiting the ALJ's Order Granting Sanctions.

15. First, the Complainants' assertion that nobody answered the question asked by Complainant John Holder at the hearing is irrelevant. Motion to Remove Sanctions ¶¶ 4-9. Mr. Holder did not call any witness to answer this question. Mr. Holder raised this question as a part of his testimony in this proceeding, and did not direct it towards any other specific witness. *See* Tr. 16:12-15, 18:7-11.

16. Furthermore, each time the question was raised it was objected to by counsel for PPL Electric. *See* Tr. 16 and 18.

17. Second, the Complainants' assertion that the sanction imposed should be lifted because "Our concerns legitimately have to do only with causation, that is, the potential of RF emitted by smart meters to cause adverse health effects in the future," should similarly be rejected. Motion to Remove Sanctions ¶ 8. As explained by PPL Electric in its June 22, 2020 Reply to the Complainants' Exception to ALJ Order Granting Respondent's Motion for

Sanctions, the requested sanctions were properly granted because the Complainants refused to provide information “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.” PPL Reply, p. 3. PPL Electric further explained:

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.

PPL Reply, pp. 3-5.

18. Finally, the Complainants erroneously assert that the Order Granting Sanctions denies them due process. Motion to Remove Sanctions ¶¶ 10-12 and at p. 4.

19. 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).

20. 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.

21. 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.

22. The Complainants were also provided the opportunity to submit evidence in support of their claims at hearing held on August 6, 2020, as well as present argument in support of their position.

23. Considering the afore-mentioned opportunities provided to the Complainants to litigate their proceeding, their due process argument should be rejected. The Complainants have been afforded due process; they are not due a third attempt to litigate PPL Electric’s Motion for Sanctions.

24. Therefore, the Post-Hearing Motions should be denied.

III. ANSWER TO THE MOTION FILE AMENDED BRIEF AND MOTION IN OPPOSITION TO RESPONDENT’S MOTION FOR SANCTIONS

25. PPL Electric makes references to and incorporates the foregoing paragraphs 1-25 as if they were set forth in full. The Complainants’ Motion to File Amended Brief and Motion in Opposition to Respondent’s Motion for Sanctions should be denied.

26. The Complainants were provided an opportunity to present legal arguments at the hearing held in this matter. *See* Tr. 47-50. As such, the filing of an Amended Brief, which

essentially restates the evidence presented and associated arguments, would be redundant and is not necessary.

27. Moreover, the Complainants' request to file an Amended Brief appears to be nothing more than an attempt to present evidence and arguments that they have been precluded from presenting under the ALJ's Order Granting Sanctions. Indeed, the Complainants specifically request "permission to file, without sanctions, an Amended Main Brief which fully comports and complies with regulations regarding timing and the content and form required for briefs." Motion to File Amended Brief and Motion in Opposition to Respondent's Motion for Sanctions ¶ 10 (emphasis added).

28. As explained above, the Complainants have been afforded a full and fair opportunity to litigate and be heard regarding the sanctions sought by PPL Electric in this proceeding. They cannot, yet again, attempt to relitigate this issue, especially once the evidentiary hearing has been concluded and the record in this matter has closed.

29. Therefore, and for the reasons more fully explained herein, the Complainants' Post-Hearing Motions should be denied.

IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the “Motion to Remove Sanctions” and the “Motion Requesting Permission to File Amended Main Brief and Motion in Opposition to Respondent’s Motion for Sanctions” of John and Janet Holder and June Maculesky be denied in their entirety.

Respectfully submitted,



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