Post & Schell P.C.
ATTORNEYS AT LAW

17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
215-587-1000 Main
717-731-1985 Main Fax
www.postschell.com

Devin Ryan

dryan@postschell.com
717-612-6052 Direct
717-731-1985 Direct Fax
File #: 167945

October 16, 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: Kathleen R. Anthony v. PPL Electric Utilities Corporation
Docket No. C-2018-3000490

Dear Secretary Chiavetta:

Enclosed for filing please find the Replies of PPL Electric Utilities Corporation to the Exceptions of Kathleen R. Anthony in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Devin Ryan

DTR/jl
Enclosures

cc: Honorable Elizabeth Barnes
Certificate of Service
Office of Special Assistants (*ra-OSA@pa.gov*)

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 EMAIL & FIRST CLASS MAIL

Kathleen R. Anthony
505 Norway Place
Bethlehem, PA 18015-4435
E-mail:Kranthony7@gmail.com

Date: October 16, 2020

Devin T. Ryan

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Kathleen R. Anthony,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3000490
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE EXCEPTIONS OF KATHLEEN R. ANTHONY

Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID # 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Phone: 610-774-2599
Fax: 610-774-4102
E-mail: kklock@pplweb.com
mjshafer@pplweb.com

Devin T. Ryan (ID # 316602)
Garrett P. Lent (ID # 321566)
Lindsay A. Berkstresser (ID # 318370)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: dryan@postschell.com
glent@postschell.com
lberkstresser@postschell.com

Curtis S. Renner (ID # 326488)
Watson & Renner
1901 Pennsylvania Avenue, NW
Suite 1005 - ENS
Washington, DC 20006
Phone: 202-737-6302
E-mail: crenner@w-r.com

Date: October 16, 2020

Attorneys for PPL Electric Utilities Corporation

TABLE OF CONTENTS

Page

I. INTRODUCTION

PPL Electric Utilities Corporation ("PPL Electric" or the "Company"), pursuant to 52 Pa. Code § 5.535, hereby respectfully submits these Replies to the Exceptions of Kathleen R. Anthony ("Complainant"). In the Initial Decision ("ID"), Administrative Law Judge Elizabeth H. Barnes (the "ALJ") dismissed the Complainant's Formal Complaint challenging the Company's planned installation of a new advanced metering infrastructure ("AMI") meter at the Complainant's property as well as the installation of the Company's existing powerline carrier ("PLC") meter approximately 18 years ago on October 21, 2002.[1] The ALJ correctly held that the Complainant failed to prove by a preponderance of evidence that the installation of the AMI meter would violate 66 Pa. C.S. § 1501 and that the installation of the PLC meter violated 66 Pa. C.S. § 1501. The ALJ also properly determined that there is no provision to "opt-out" of a smart meter installation under Pennsylvania law.

On October 5, 2020, the Complainant filed Exceptions to the ID.

As explained herein, the Complainant's Exceptions are without merit and should be denied. Accordingly, the Company respectfully requests that the Pennsylvania Public Utility Commission ("Commission") deny the Complainant's Exceptions and adopt the ID without modification.[2]

[1] The allegations about the Company's PLC meter were raised in the Complainant's Amended Formal Complaint filed on April 9, 2019. PPL Electric notes that the ID incorrectly states that the Company "did not submit an Answer to the amended Complaint." (ID, p. 2.) In actuality, PPL Electric timely filed a CONFIDENTIAL Answer and New Matter to the Amended Formal Complaint on April 26, 2019.

[2] Some of the Complainant's Exceptions overlap, while others contain multiple arguments within the same Exception. Accordingly, PPL Electric responds to the Complainant's Exceptions by subject matter rather than individually by the number of the Exception.

II. REPLIES TO EXCEPTIONS

A. REPLY TO EXCEPTION NO. 1 – THE COMPLAINANT WAS AFFORDED MORE THAN DUE PROCESS IN THIS PROCEEDING

The Complaint avers in the Exceptions that the ALJ denied her due process because the ALJ failed to issue a briefing schedule and did not "ask [her] about a Brief filing." (Exceptions, p. 2.) According to the Complainant, the dismissal of her Complaint without briefing violates her constitutional right to due process. (Exceptions, p. 2.) The Complainant's argument is completely without merit.

The lack of briefs being submitted by the parties did not deny the Complainant due process. 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).

In this case, the Complainant had a full and fair opportunity to present her case and make her arguments at the evidentiary hearing. Indeed, the Complainant had the opportunity to present her testimony and evidence. Moreover, the Complainant was allowed to give a closing argument to present her legal arguments, including that installing the AMI meter would violate 66 Pa. C.S. § 1501, that the installation of the PLC meter violated 66 Pa. C.S. § 1501, and that Act 129 does not mandate the installation of smart meters for all customers. (*See* Tr. 75-81.) The fact that no briefs were submitted is irrelevant. The Complainant obviously had the opportunity to present all of her legal arguments orally at the evidentiary hearing. Therefore, the Complainant undoubtedly was afforded due process in this proceeding.

Further, the ALJ's decision not to issue a briefing schedule was entirely within her discretion. Section 5.483(a) of the Commission's regulations explicitly states that the presiding officer has the authority to, among other things, "regulate the course of the proceeding." 52 Pa. Code § 5.483(a). And even if the Complainant was harmed by the lack of briefing, which she was not, her concern is moot. Through the filing of her Exceptions, the Complainant has been able to present her written arguments in support of her Formal Complaint.

Finally, the Commission recently rejected this very same argument raised by a smart meter complainant. *See Lucey v. Metropolitan Edison Co.*, Docket No. C-2018-3003679 (Order entered October 8, 2020). In *Lucey*, the complainant claimed that "he was denied the ability to present his legal arguments because the ALJ did not issue a briefing schedule, and as a result, his due process rights were violated." *Lucey*, p. 17. The Commission found the complainant's "claim that he was not afforded due process to be without merit." *Id.*, 18. The Commission reasoned that the complainant "appeared at, and participated in, the evidentiary hearing," where he had the "opportunity to explain why he filed the Complaint and what relief he was seeking from the Commission." *Id.*, p. 17. He also had "the chance to cross-examine Met-Ed's witness" and "give a closing argument." *Id.*, pp. 17-18. The Commission also observed that "the ALJ had the authority at her discretion to regulate the course of the proceeding, including the use of pre- and post-hearing procedures." *Id.*, p. 18. "[I]n *pro se* complaint cases in particular, it is a long-standing procedural practice of the Office of Administrative Law Judge to not require the submission of written briefs in the interest of minimizing the administrative burden placed on *pro se* complainants in litigating a formal complaint before the Commission." *Id.*, p. 18. Thus, like in the Commission's recent decision in *Lucey*, the Commission should reject the Complainant's argument that the lack of briefs denied her due process.

For these reasons, the Commission should deny the Complainant's Exception No. 1.

B. REPLY TO EXCEPTION NO. 2 – THE ALJ PROPERLY REGULATED THE COURSE OF THE PROCEEDING AND REJECTED THE COMPLAINANT'S REQUEST TO EXTEND THE DEADLINE TO SERVE WRITTEN EXPERT TESTIMONY

In her Exceptions, the Complainant also asserts that the ALJ "erred when she did not allow" the Complainant "time to secure [her] witnesses" that were needed for the evidentiary hearing. (Exceptions, p. 2.) According to the Complainant, the ALJ should have extended the August 30, 2019 deadline for written expert testimony because her witnesses were not available until January or February 2020. (Exceptions, p. 2.) The Complainant's argument completely lacks merit.

By way of background, the hearing in this case was continued multiple times. On August 30, 2019 (*i.e.*, the due date of the Complainant's written expert testimony), the Complainant submitted a request to continue the October 31, 2019 hearing, so that she could have Dr. Tania Slawecki evaluate her in January 2020. (Order Denying a Fourth Continuance, p. 1.) The ALJ denied that request on September 11, 2019. (Order Denying a Fourth Continuance, p. 2.) Subsequently, on October 1, 2019, the Complainant made a second request to continue the hearing for the same reasons outlined in her August 30, 2019 request. (Order Denying Complainant's Second Request for a Fourth Continuance, p. 1.) On October 16, 2019, the ALJ denied that second request as well. (Order Denying Complainant's Second Request for a Fourth Continuance, p. 2.)

The ALJ properly denied both of these requests by the Complainant. Under the ALJ's Order Granting Second Continuance and Order Granting Third Continuance, "no further requests for continuances [would] be granted absent exigent circumstances." (Order Granting Second Continuance, p. 2; Order Granting Third Continuance, p. 2.)

Here, the Complainant failed to establish that her reasons for the requested continuances constituted "exigent circumstances." (Order Denying a Fourth Continuance, p. 2.) As explained

by PPL Electric when it opposed these requests, the case was initiated when the Formal Complaint was served on PPL Electric on March 15, 2018. (PPL Electric's September 6, 2019 Letter, pp. 1-2; PPL Electric's October 15, 2019 Letter, pp. 1-2.) From that point until the August 30, 2019 deadline for the Complainant's written expert testimony, the Complainant had approximately 530 days to secure expert witnesses and have them prepare their written expert testimony. (PPL Electric's September 6, 2019 Letter, p. 2; PPL Electric's October 15, 2019 Letter, p. 2.) Moreover, the Complainant long had notice that there was a deadline for her to submit written expert testimony. In the original Prehearing Order dated April 5, 2018, the ALJ established a deadline of June 11, 2018, for the Complainant to serve written expert testimony. Therefore, no exigency existed here, and the ALJ afforded more than sufficient time to the Complainant to secure her expert witnesses. The Complainant simply failed to properly prepare in sufficient time before the August 30, 2019 deadline for written expert testimony.

Based on the foregoing, the Complainant's Exception No. 2 should be denied.

C. REPLIES TO EXCEPTIONS NOS. 3, 5, AND 6 – THE ALJ PROPERLY FOUND THAT THE COMPLAINANT FAILED TO SUSTAIN HER BURDEN OF PROOF THAT INSTALLING THE NEW AMI METER WOULD VIOLATE THE PUBLIC UTILITY CODE AND THAT THE INSTALLATION OF THE PLC METER VIOLATED THE PUBLIC UTILITY CODE

The Complainant disputes the ALJ's finding that she failed to meet her burden of proof that installing the new AMI meter would violate Section 1501 of the Public Utility Code and that the installation of the PLC meter violated Section 1501 of the Public Utility Code. (Exceptions, pp. 2-3.) According to the Complainant, the ALJ "erred in not giving credence to [her] direct testimony and in [her] Amended Complaint in regard to Smart Meters and the PLC metering system used by PPL that affect the internal wiring of a home through the power lines in a manner that can produce long-term adverse health effects." (Exceptions, p. 2.) Furthermore, the

Complainant argues that the unrebutted expert testimony of Dr. Christopher Davis and Dr. Mark Israel should be disregarded. (Exceptions, pp. 10-11.) She alleges that Dr. Davis's testimony is not credible and that the ALJ erred in accepting Dr. Davis as an expert in Biophysics. (Exceptions, p. 10.) Regarding Dr. Israel, the Complainant argues that his expert testimony is irrelevant because, among other reasons, he never saw the Complainant before the hearing. (Exceptions, p. 10.)

As explained herein, the Complainant's Exceptions are without merit and should be denied.

1. The Complainant's Allegations about the Expert Opinions and Qualifications of Dr. Christopher Davis and Dr. Mark Israel Are Completely Without Merit and Should Be Rejected

The Complainant's characterizations of the expert opinions and qualifications of Dr. Christopher Davis and Dr. Mark Israel completely lack merit. Both of these experts have extensive professional qualifications, they are highly regarded in their respective fields (*see* PPL St. No. 1, pp. 1-5; PPL St. No. 2, pp. 1-7), and they have been recognized as qualified experts in federal and state court proceedings and in many proceedings before this Commission.[3] The fact that the experts have had their opinions relied on by the Commission in multiple proceedings does not indicate any type of bias or lack of credibility, as alleged by the Complainant. (*See* Exceptions, pp. 10-11.) To the contrary, it demonstrates that their expert opinions are reliable and demonstrate that there is no reliable medical or scientific basis to conclude that the Company's new AMI meters cause, contribute to, or exacerbate adverse health effects.

[3] *See, e.g., Newman v. Motorola, Inc.*, 218 F. Supp.2d 769 (D. Md. 2002), *affirmed*, 78 Fed. Appx. 292 (4th Cir. 2003); *Lakey v. Puget Sound Energy, Inc.*, 296 P.3d 860 (Wash. 2013); *Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line in Portions of Lackawanna, Luzerne, Monroe, Pike and Wayne Counties, Pennsylvania*, Docket Nos. A-2009-2082652, *et al.* (Order entered Feb. 12, 2010); *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Order entered May 3, 2018).

Further, the Complainant never objected to Dr. Davis or Dr. Israel being certified as experts in their respective fields of expertise. (Tr. 55, 67.) Thus, she waived any objection to those witnesses being considered as experts and cannot raise that objection for the first time in the Exceptions. Even if she did preserve that argument, uncontroverted record evidence demonstrates that both Dr. Davis and Dr. Israel have more than sufficient qualifications, education, and experience to offer expert opinions in their respective fields of expertise. (S*ee* PPL St. No. 1, pp. 1-5; PPL St. No. 2, pp. 1-7.)

Thus, the ALJ properly relied on the expert opinions offered by Dr. Davis and Dr. Israel in rendering her ID.

2. The ALJ Correctly Determined that There Is No Reliable Medical or Scientific Basis to Conclude that the New AMI Meter Will Cause, Contribute to, or Exacerbate Any Adverse Health Effects

The ALJ properly held that there is no reliable medical or scientific basis to conclude that the new AMI meter will cause, contribute to, or exacerbate any adverse health effects. (ID at 10-16.) As the ALJ found, "[t]here is no reliable medical basis to conclude that RF fields from the AMI meter being used by PPL Electric will cause or contribute to the development of illness or disease." (ID at 14.) Furthermore, the ALJ held that "[t]here is no reliable medical basis to conclude that RF fields from the AMI meter being used by PPL Electric would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainant . . . or any other adverse health effects." (ID at 14.)

In reaching that determination, the ALJ relied on PPL Electric's credible and reliable expert testimony refuting the Complainant's bald assertions that the AMI meter could cause or contribute to adverse health effects. (PPL St. No. 1, pp. 5-17; PPL Exhibits CD-1 through CD-5; PPL St. No. 2, pp. 7-19; PPL Exhibits MI-1 through MI-3.) First, Dr. Davis testified that the Federal Communications Commission ("FCC") has determined safe public exposure levels for radio

frequency ("RF") fields from devices that transmit RF signals, such as the AMI meters. (PPL St. No. 1, p. 9.) The FCC safe public exposure limits are based on evaluations of the body of scientific research on RF fields and were adopted in consultation with other federal agencies, including the Food and Drug Administration ("FDA") and the Environmental Protection Agency ("EPA"). (PPL St. No. 1, p. 9.) The FCC continues to coordinate with the agencies and to consider whether new scientific research shows any adverse effects from RF fields. (PPL St. No. 1, pp. 9-11.) In fact, the FCC recently reviewed its current RF exposure limits and the scientific research related thereto in response to a Notice of Inquiry issued by the FCC. "After reviewing the extensive record submitted in response to that inquiry" by over 564 commenters, the FCC found "no appropriate basis for and thus decline[d] to propose amendments to [its] existing limits at this time." *In the Matter of Proposed Changes in the Comm'n's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields,* 2019 FCC LEXIS 3622, at *2, 483 n.1 (F.C.C. Dec. 4, 2019).

Based on the engineering specifications for the Landis + Gyr AMI meter being deployed by the Company, Dr. Davis calculated that the levels of RF fields from the AMI meters are **98,000 times lower** than the RF exposure safety limits established by the FCC. (PPL St. No. 1, p. 13; PPL Exhibit CD-2.) As a result, Dr. Davis found that "the RF field levels from the AMI meters being used by PPL Electric more than comply with the applicable FCC RF exposure limit." (PPL St. No. 1, p. 13.) Moreover, the RF signals from the AMI meter are of very short duration and will occur for only a total of 84 seconds over a 24-hour period. (PPL St. No. 1, p. 7.)

Dr. Davis also testified that there are many sources of RF signals in the everyday environment and the RF fields from the AMI meter are much lower than from other typical sources. (PPL St. No. 1, p. 14.) For example, RF fields from using cell phones can be over 260,000 times

higher than the RF fields from the AMI meter, and RF exposures from microwave ovens can be over 820,000 times higher. (PPL St. No. 1, p. 15.) Even 30 feet away from a person using a cell phone, the RF fields are 3 times higher than from the AMI meter. (PPL St. No. 1, p. 14.)

Furthermore, the existing background levels of RF fields at the Complainant's residence are many times higher than the fields from the AMI meter. (PPL St. No. 1, p. 15.) Dr. Davis testified that there are five television broadcast towers within a 50-mile radius of the Complainant's location. (PPL St. No. 1, p. 15.) Based on the locations of each tower and their RF power outputs, the RF fields at three meters from the AMI meter being used by PPL Electric are 197 times smaller than the background RF exposure at the Complainant's residence. (PPL St. No. 1, p. 15; PPL Exhibit CD-5.) Thus, considering the AMI meter's RF fields are substantially lower than the FCC standard and many everyday sources, there is no reliable scientific basis to conclude that the very low levels of RF fields from the AMI meters being deployed by the Company can or will cause any adverse thermal or non-thermal biological effects in people. (*See* ID at 14-15; PPL St. No. 1, pp. 1-17.) Notably, Dr. Davis's expert testimony on these points was not contradicted by any other expert testimony.

Second, Dr. Israel – the only medical expert to present testimony in this case – evaluated the scientific research on RF fields and adverse health effects. (PPL St. No. 2, pp. 8-19.) He testified that he has been systematically examining this research over the past several decades and that many hundreds of studies have been published. (PPL St. No. 2, p. 6.) Dr. Israel stated that the three groups of controlled laboratory studies on animals "are particularly informative because they address fundamental biological functions that are very sensitive to any disruption: genetics, reproduction, and growth and development." (PPL St. No. 2, p. 9.) Dr. Israel described a number of the studies in these areas that he considered good examples of well-designed and well-conducted

studies, which found no adverse effects on genetics, fertility, reproduction, growth, or development in the animals exposed to RF fields. (PPL St. No. 2, p. 9.) Further, Dr. Israel provided examples of well-conducted animal studies on RF fields and cancer. (PPL St. No. 2, p. 10.) These studies also did not find any increased incidence in cancer in the RF exposed animals compared to non-exposed animals. (PPL St. No. 2, p. 10.)

Based on the body of scientific research showing no consistent and reproducible effects from RF fields on cancer and other adverse health effects, the World Health Organization ("WHO") has concluded that "no adverse health effects have been established as being caused by mobile phone use." (PPL St. No. 2, pp. 10-11.) Many other public health authorities, including agencies in Canada, the U.K., Sweden, Norway, the Netherlands, and New Zealand, among others, have recently reached similar conclusions. (PPL St. No. 2, p. 11.) Further, several U.S. state public health authorities and public utility commissions have investigated claims about health effects from smart meters, all of which have found that RF fields from smart meters do not pose any public health risk. (PPL St. No. 2, pp. 11-12.)

In addition, Dr. Israel reviewed the published scientific research on electromagnetic hypersensitivity ("EHS") from the perspective of a medical doctor. (PPL St. No. 2, pp. 13-16.) He was the only medical doctor to provide expert testimony in this case. Dr. Israel testified that claimed symptoms related to EHS are more accurately described as "Idiopathic Environmental Intolerance" ("IEI"), in which "idiopathic" means "cause unknown," rather than electromagnetic hypersensitivity. (PPL St. No. 2, p. 13) (emphasis added). This is consistent with a recommendation from the WHO. (PPL St. No. 2, p. 13.) Dr. Israel evaluated the scientific research on IEI and found that "[r]eliable studies dating back to at least 2002 and also recent reviews of the studies by experts and reviews by expert panels of public health authorities have found IEI and the

variety of symptoms attributed to it are not caused by exposure to RF fields." (PPL St. No. 2, p. 13.) For example, a systematic review of 46 studies involving 1,175 individuals who claimed IEI symptoms found that people claiming IEI symptoms from RF fields could not replicate the claimed effect under controlled laboratory conditions. (PPL St. No. 2, p. 14.) Another recent study found that people who claimed IEI symptoms from RF fields reported lower levels of well-being when they knew they were exposed to RF fields, but when they did not know if they were being exposed, their reports of symptoms were not associated with RF fields. (PPL St. No. 2, p. 14.) That study concluded that "it is IEI-EMF individuals' belief that exposure to RF EMFs will cause harm, rather than actual exposure itself, that results in the presence of symptoms in IEI-EMF individuals." (PPL St. No. 2, p. 14.) Even more recent studies have shown "[t]his relationship between the belief of exposure and the reporting of symptoms" and "has been described as a 'nocebo effect.'" (PPL St. No. 2, p. 15.) This "nocebo effect" does provide "a reasonable explanation for the presence of symptoms in IEI-EMF and control participants." (PPL St. No. 2, p. 15.)

Moreover, the research on IEI has been evaluated by credible public health entities and expert groups, including the United Kingdom Health Protection Agency (2012), the Royal Society of Canada (2013), the New Zealand Ministry of Health (2015), and the European Commission's Scientific Committee on Emerging and Newly Identified Health Risks (2015). (PPL St. No. 2, p. 15.) Based on their reviews of the scientific research, these entities concluded there is no reliable scientific evidence that exposure to RF fields causes claimed IEI symptoms. (PPL St. No. 2, pp. 15-16.)

Based on the evidence presented, the ALJ correctly concluded that the Complainant's allegations, which were based on her non-expert opinion and largely based on hearsay materials, were insufficient to sustain her burden of proof. (ID at 11-16.) Moreover, the Company presented

overwhelming evidence through its scientific and medical expert witnesses, Dr. Christopher Davis and Dr. Mark Israel, to support the ALJ's finding that there is no reliable basis to conclude that the new AMI meter will cause or contribute to any adverse health effects. Nevertheless, the Complainant contends that the ALJ erred in finding that she failed to sustain her burden of proof.[4]

Here, the Complainant merely has alleged that the new AMI meter could cause her or members of her household to experience adverse health effects, based upon hearsay materials.[5] (Exceptions, pp. 2-3.) Such bald assertions, personal opinions or perceptions do not constitute evidence. *See Mid-Atlantic Power Supply Ass'n v. Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citation omitted). Further, testimony consisting of guesses, conjecture or speculation cannot prove a party's claims. *Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Dep't of Highways*, 398 Pa. 518, 159 A.2d 206 (1960). Thus, the ALJ correctly held that the Complainant did not sustain her burden of proof that the AMI meter's installation would cause, contribute to, or exacerbate adverse health effects.

3. The ALJ Properly Rejected the Complainant's Allegations about the Current PLC Meter Installed at the Complainant's Premises

The Complainant's allegations about the currently-installed PLC meter causing or contributing to adverse health effects are also without merit. The Complainant's PLC meter was installed on October 21, 2002. (PPL St. No. 4, p. 5.) The PLC meters, often referred to by customers as "analog meters," utilize the power lines as a means of communication. (PPL St. No. 4, p. 5.) Specifically, a pulse from the PLC meter is encoded on the 60 Hertz ("Hz") line frequency,

[4] In Exception No. 7, the Complainant disputes that this is the correct burden of proof standard. As explained in Section II.E.3., *infra*, the Commonwealth Court recently affirmed the Commission's burden of proof as applied in smart meter complaint cases.

[5] As explained previously, PPL Electric's expert witnesses presented credible, thorough, and reliable testimony establishing that there is no reliable medical or scientific basis to conclude that the AMI meters will cause, contribute to, or exacerbate adverse health effects.

which identifies the designated meter as well as that meter's energy consumption data so that the Company can record the data to the proper account. (PPL St. No. 4, p. 5.)

The fundamental flaw with the Complainant's argument is that the PLC meters do not contain radio transmitters. (PPL St. No. 4, p. 5.) Therefore, unlike PPL Electric's AMI meters, the PLC meters do not emit RF fields. (ID, p. 12; PPL St. No. 4, p. 5.) Thus, even assuming *arguendo* that RF fields can cause or contribute to adverse health effects as alleged by the Complainant, the Complainant's allegations about the PLC meters causing similar issues are completely unfounded.

Moreover, the Complainant avers in her Exceptions that the FCC, in "2003-2004," found on a "PLC/Broadband coupling" that a "PLC metering system, coupled with other information, could produce excessive radiation on the power lines themselves." (Exceptions, p. 2.) However, the Complainant lacks the technical qualifications to testify about these types of engineering issues. As the ALJ observed, the "Complainant has a bachelor's degree in music education" and "is not an expert in medicine or electrical engineering." (ID, p. 12.) The Complainant even stated at the hearing that she is "not an expert." (Tr. 38.) Neither does anything in the record demonstrate that the Complainant has personal knowledge about these issues. In fact, she admitted at the hearing that her opinion about the PLC meters was solely based off of things she had read. (Tr. 38.) Consequently, her testimony simply amounts to bald assertions, personal opinions or perceptions, which do not constitute evidence. *See Mid-Atlantic Power Supply Ass'n v. Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citation omitted). As explained previously, testimony consisting of guesses, conjecture or speculation cannot prove a party's claims. *Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Dep't of Highways*, 398 Pa. 518, 159 A.2d 206 (1960).

Furthermore, even if the Complainant's testimony about this alleged FCC investigation were accepted, the Complainant presented absolutely no evidence about: (1) whether those conditions were caused by issues with the power lines or broadband, rather than the PLC meters; (2) whether those conditions have since been resolved; (3) whether those conditions existed on the power lines serving or in proximity to the Complainant; (4) the incremental amount of RF fields, if any, produced on the power lines by the PLC meter; or (5) the incremental amount of RF fields, if any, produced on the power lines by the PLC meter as measured at the Complainant's property. Such evidence is necessary to establish that the PLC installed at the Complainant's property causes or contributes to adverse health effects.

Finally, as noted by PPL Electric in its New Matter and at the evidentiary hearing, the Complainant's allegations about the PLC meters are completely barred or substantially limited by the three-year statute of limitations set forth in 66 Pa. C.S. § 3314(a), given that the PLC meter was installed in 2002. (Tr. 83-84.)

4. PPL Electric Has the Legal Right to Terminate the Complainant's Electric Service if It Is Denied Access to Its Meter

In her Exceptions, the Complainant erroneously asserts that it would be unlawful for PPL Electric to terminate her electric service if she does not allow the Company to install the new AMI meter. (Exceptions, p. 3.)

PPL Electric has a legal right under its Commission-approved tariff, the Commission's regulations, and Chapter 14 of the Public Utility Code to terminate the Complainant's service if it is denied reasonable access to its meter. *See* 66 Pa. C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); PPL Electric Exhibits KD-4 and KD-5. Indeed, the Commission has declared that "[i]t is well-settled that where a customer refuses a utility access to its meter, the utility may terminate service after required notice is provided." *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160,

at *91-92 (Order entered May 3, 2018). Therefore, the termination of service to a customer for refusing a new AMI meter installation is consistent with Section 1501 of the Public Utility Code, the Commission's regulations, and the utility's tariff. *Id.* at *91-94. Thus, the Company can legally terminate the Complainant's service if she denies the Company access to replace her meter.

5. The Commission Should Reject the Complainant's Attempt to Introduce and Rely on Extra-Record Evidence in Her Exceptions

In her Exceptions, the Complainant improperly attempts to introduce and rely upon evidence that was not admitted at the hearing and, therefore, is not a part of the record. Specifically, the Complainant presents, cites to, or mentions the following alleged facts and materials, which are **not** in the record, including:

- Allegations about the FCC's and ANSI's standards (Exceptions, p. 11);
- Assertion that Dr. Davis and Dr. Israel have testified in "all the[] smart meter hearings" for all "other utilities, "[e]xcept for Duquesne (Exceptions, pp. 10-11);
- Allegation about Dr. Davis's and Dr. Israel's compensation (Exceptions, p. 11); and
- Assertion that "thousands of studies" since the 1930s have shown adverse health effects experienced by "sufferers of sensitivity to RF/Microwaves" (Exceptions, p. 10).

The Commission should completely disregard the Complainant's extra-record evidence and her arguments based on that extra-record evidence. It is well-established that parties cannot introduce new evidence and arguments for the first time at the exceptions stage.[6] "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

[6] *See, e.g., Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45, at *8-9 (Order entered Feb. 10, 1994) (denying party's attempt to introduce extra-record evidence in its exceptions); *Arthurs v. Pa. Elec. Co.*, 2019 Pa. PUC LEXIS 197, at *14 (Order entered May 23, 2019) ("This Commission can consider only the evidence in the record before us, and we cannot consider extra record evidence or new arguments presented for the first time in the Exceptions stage of the proceeding.").

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). Indeed, 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); *see Pa. PUC v. Nat'l Fuel Gas Distrib. Corp.*, 1993 Pa. PUC LEXIS 95, at *10 (Order entered July 30, 1993) ("[S]uch material was outside the record and could be detrimental to the rights of other parties to confront such evidence.").

Here, the Complainant's extra-record evidence and arguments based thereon were presented for the first time in the Complainant's Exceptions. By waiting until her Exceptions to present this purported evidence and these arguments, the Complainant denied PPL Electric an opportunity to review and inspect that evidence, to cross-examine the Complainant about that evidence, and to present evidence and arguments in rebuttal. Therefore, it would violate PPL Electric's due process rights for any of the Commission's findings to be based upon or influenced by the Complainant's extra-record evidence and new arguments.

In addition, Section 5.431 of the Commission's regulations prescribes that "[t]he record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission." 52 Pa. Code § 5.431(a). Particularly relevant here, "[a]fter the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion." *Id.* § 5.431(b). Petitions to reopen the record can be granted "if there is reason to believe that conditions of factor or law have so changed as to requires, or that the public interest requires, the reopening of the record." 52 Pa. Code § 5.571.

Here, the record closed on July 10, 2020. (ID, p. 2.) The Complainant made no motion to keep the record open or to reopen the record so that her extra-record evidence could be admitted. Moreover, in her Exceptions, the Complainant never demonstrates good cause for introducing this extra-record evidence, nor does she show changes in fact or law that would warrant the reopening of the record to admit such evidence. As a result, the Complainant's extra-record evidence cannot be admitted into the record.

Thus, although PPL Electric has decided not to burden the Commission with ruling on a Motion to Strike these portions of the Complainant's Exceptions, the Commission should not rely on the Complainant's extra-record evidence, as well as her new arguments based on such extra-record evidence, to make any findings in this proceeding. *See, e.g.*, *Petition of Pa. Power Co. for Approval of Interim POLR Supply Plan*, 2006 Pa. PUC LEXIS 56, at *3 (Order entered Apr. 28, 2006) (observing that "ALJ Gesoff ignored Reliant's Reply Brief, due to the extra-record evidence contained within").

Based on the foregoing, the Complainant's Exceptions Nos. 3, 5, and 6 should be denied.

D. REPLY TO EXCEPTION NO. 4 – THE ALJ CORRECTLY REJECTED THE COMPLAINANT'S ARGUMENT THAT SHE SHOULD BE ABLE TO "OPT OUT" OF THE AMI METER'S INSTALLATION

In her Exceptions, the Complainant argues that she should be able to "opt out" of having an AMI meter installed at her property. (Exceptions, pp. 3-10.) According to the Complainant, Act 129 of 2008 does not mandate the installation of the AMI meters for all customers and was passed as an "opt-in" statute. (Exceptions, pp. 3-10.) She avers that the Commission misinterpreted the General Assembly's intent in finding that the statute requires AMI meters to be installed throughout the electric distribution companies' ("EDCs") service territories. (Exceptions, pp. 3-10.) As alleged support, the Complainant relies on the statements of a few Pennsylvania

legislators about the statute. (Exceptions, p. 5.) The Complainant's argument should be completely rejected.[7]

The ALJ properly held that the installation of the new AMI meter is required by law. (ID, pp. 16-19.) Section 2807(f) of the Public Utility Code prescribes that EDCs, like PPL Electric, must file smart meter plans and "**shall** furnish smart meter technology" in any of the following situations: (1) "[u]pon request from a customer that agrees to pay the cost of the smart meter at the time of the request"; (2) "[i]n new building construction"; and (3) "[i]n accordance with a depreciation schedule not to exceed 15 years." 66 Pa. C.S. § 2807(f)(1)-(2) (emphasis added). In interpreting the smart meter provisions of Act 129, the Commission declared that EDCs must "deploy smart meters system-wide" because of the requirement that smart meters be deployed "in accordance with a depreciation schedule not to exceed 15 years." *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655, p. 14 (Order entered June 24, 2009) ("*Smart Meter Implementation Order*"). Therefore, PPL Electric maintains that it must install the new smart meters for every customer in its service territory, including the Complainant.

In addition, nothing in Act 129 permits a customer to "opt-out" of a smart meter installation. In fact, the Commission has repeatedly held that PPL Electric must install the new AMI meters for all of its customers. *See Hoffman-Lorah v. PPL Electric Utilities Corp.*, 2019 Pa. PUC LEXIS 195, at *72-73; *Schmukler v. PPL Electric Utilities Corp.*, Docket No. C-2017-

[7] PPL Electric observes that the Commonwealth Court recently issued a decision on October 8, 2020, in *Povacz v. Pa. PUC*, in which the Court held, among other things, that the Commission has the authority to grant "reasonable" and "appropriate" smart meter accommodations to customers without proof of harm. *See Povacz v. Pa. PUC*, Docket Nos. 492 C.D. 2019, *et al.* (Pa. Cmwlth. Oct. 8, 2020) ("*Povacz*"). However, the period for the Commission and PECO Energy Company ("PECO") to appeal that decision to the Pennsylvania Supreme Court has not expired. *See* Pa.R.A.P. 1113(a) (setting for the 30-day deadline for a party to file a petition for allowance of appeal with the Supreme Court). The Supreme Court also has discretion in whether to review the Commonwealth Court's decision. *See* Pa.R.A.P. 1114(a)-(b). Therefore, it is unclear at this time whether the Commonwealth Court's decision will be binding precedent and, if so, what the potential impact of the Court's decision on the instant proceeding would be. Thus, at this time, the Company still takes the position that it is required by Act 129 to install smart meters for all of its customers.

2621285, pp. 73-74 (Order entered July 23, 2019), *appeal pending*, 1102 C.D. 2019. Similarly, the Commission found in several other cases that Act 129 contains no such opt-out language. *See, e.g.*, *Starr v. PECO Energy Co.*, Docket No. C-2015-2516061, p. 11 (Order Entered Sept. 1, 2016) (footnote omitted). Specifically, in *Starr*, the Commission observed that it has "rejected similar claims that the installation of smart meters is not mandatory or that an opt-out is permissible under Act 129." *Id.*; *see Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at *11-13 (Order entered May 3, 2018). Only the General Assembly can amend Act 129 to add an opt-out provision. Notably, although bills have been proposed in the General Assembly to add such an opt-out (see, e.g., House Bill 1564 of 2017-2018 Session), they have never been enacted. Thus, a customer cannot opt-out of the AMI meter installation under Act 129.

Moreover, PPL Electric must comply with the relevant Commission orders directing the Company to deploy the new AMI meters. The Commission determined that the Company's PLC meters were not compliant with Act 129 and the Commission's *Smart Meter Implementation Order*. *See Petition of PPL Electric Utilities Corporation for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123945, p. 24 (Order entered June 24, 2010) ("*2010 Smart Meter Order*"). Under the Company's Commission-approved Smart Meter Plan, PPL Electric must replace all of the PLC meters with the RF Mesh meters, which the Commission declared as meeting all of the requirements of Act 129 and the Commission's *Smart Meter Implementation Order*. *See Petition of PPL Electric Utilities Corp. for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781, p. 24 (Order Entered Sept. 3, 2015) ("*2015 Smart Meter Order*"). PPL Electric is not permitted to install any other type of meter under its Smart Meter Plan and cannot leave the existing, non-compliant

PLC meter in place. (*See* PPL St. No. 4, p. 6.) Therefore, the Company must follow its Smart Meter Plan and install the new AMI meter for the Complainant's property.[8]

The Complainant also erroneously contends that the Company should be allowed to grant her an opt-out of the smart meter installation because the Commission's *Smart Meter Implementation Order* is not legally binding. (*See* Exceptions, p. 9.) The Order cited by the Complainant is the Commission's June 9, 2010 Order approving the initial Smart Meter Deployment Plan for Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), and Pennsylvania Power Company ("Penn Power") at Docket No. M-2009-2123950. *See Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co. and Pennsylvania Power Co. for Approval of Smart Meter Technology Procurement and Installation Plan*, 2010 Pa. PUC LEXIS 963 (Order entered June 9, 2010). In her Exceptions, the Complainant omits the Commission's statement in that Order that "EDCs are not free to ignore" the *Smart Meter Implementation Order*. *Id.* at *17 (Order entered June 9, 2010). Therefore, the Complainant's reliance on that Order is misplaced.

Additionally, the Commission's *2015 Smart Meter Order*, which requires the installation of smart meters for all of PPL Electric's customers, is legally binding on the Company. Indeed, Section 501(c) of the Public Utility Code requires "[e]very public utility, its officers, agents, and employees" to "observe, obey, and comply" with the Commission's orders. 66 Pa. C.S. § 501(c); *see also id.* § 701 (stating that formal complaints can be filed for non-compliance with a Commission order). Thus, PPL Electric must follow its Smart Meter Plan and the Commission's

[8] PPL Electric also notes that although the Commonwealth Court found in *Povacz* that the Commission has the authority to grant "reasonable" and "appropriate" accommodations for smart meters without proof of harm (see note 7, *supra*), the Court did not address whether changes to or waivers of EDCs' Commission-approved Smart Meter Plans and tariffs would be required to implement those accommodations. Presumably, those issues would be addressed, if needed, by the Commission on remand in the *Povacz* matter.

Orders and must install the new AMI meters for all of the Company's customers, including the Complainant.

For these reasons, the Commission should deny the Complainant's Exception No. 4.

E. REPLIES TO EXCEPTIONS NOS. 1, 3, AND 6 – THE COMPLAINANT'S REMAINING LEGAL ARGUMENTS ARE ENTIRELY WITHOUT MERIT

The Complainant raises other legal arguments in her Exceptions. Specifically, the Complainant contends that denying her an "opt-out" of the AMI meter installation would violate the U.S. Constitution and the Pennsylvania Constitution. (Exceptions, pp. 2-3.) She further contends that the ALJ "erred when she stated that the PUC decides cases on an individual basis and the specific allegations presented" because, among other reasons, nobody "has ever won an accommodation from the deployment of a smart meter on their property." (Exceptions, p. 11.) The Complainant also claims that ALJ "erred in requiring proof of causation." (Exceptions, p. 12.) Lastly, the Complainant makes allegations that the installation of an AMI meter would violate her rights under the Americans with Disabilities Act ("ADA"). (Exceptions, pp. 2-3.) The Complainant's arguments should be soundly rejected.

1. The Complainant's Constitutional Claims Should Be Dismissed

The Complainant argues in her Exceptions that the installation of the new AMI meter would violate her rights under the U.S. Constitution and the Pennsylvania Constitution, including the Fourteenth Amendment of the U.S. Constitution. (Exceptions, pp. 2-3.) However, she fails to identify with specificity which rights she believes would be violated. (*See* Exceptions, pp. 2-3.) These unsubstantiated and unspecific claims should be dismissed by the Commission.

For there to be a deprivation of constitutional rights, two elements must be met: (1) "the deprivation must be caused by the exercise of some right or privilege created by the state"; and (2) "the party charged with the deprivation must be a person who may fairly said to be a state actor."

Commonwealth v. Corley, 491 A.2d 829, 832 (Pa. 1985) (emphasis added) (quoting *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 937 (1982)); *see Commonwealth v. Demor*, 942 A.2d 898, 899-900 (Pa. Super. 2008) (applying principles outlined in *Corley* to Fourth Amendment analysis); *W. Pa. Socialist Workers 1982 Campaign v. Conn. General Life Ins. Co.*, 485 A.2d 1, 5-6 (Pa. Super. 1984) ("[T]he search and seizure provisions of Article 1, section 8, have been held inapplicable to the conduct of private parties.") (citations omitted).

Here, PPL Electric is not a state actor. In *Jackson v. Metropolitan Edison Co.*, the U.S. Supreme Court found that a fellow Pennsylvania electric utility, *i.e.*, Metropolitan Edison Company, was not a state actor, even though it arguably had "monopoly power" and "provided an essential public service required to be supplied on a reasonably continuous basis." *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351-53 (1974). This is consistent with the Commission's rulings "[i]n several proceedings involving complaints against smart meter installation," where the Commission "expressed agreement with the position of PPL that it is not a 'state actor' for purposes of a constitutional challenge alleging an unconstitutional search." *Kline v. PPL Electric Utilities Corp.*, p. 71 (Order entered Oct. 8, 2020).

Further, although a public utility can be found to be a "state actor" in limited, fact-specific circumstances,[9] nothing here justifies treating PPL Electric as a state actor. The Company is the entity responsible for selecting, procuring, and installing the AMI meter, not the Commission. (PPL St. No. 4, p. 4.) Although the Commission approved the use of this AMI meter, the Commission never mandated the specific type of meter that needed to be used. (PPL St. No. 4, p. 4.) PPL Electric simply had to identify and select a meter that met the requirements of Act 129 and the Commission's *Smart Meter Implementation Order*. (PPL St. No. 4, p. 4.) Indeed, nothing

[9] *See Barasch v. Pa. PUC*, 576 A.2d 79, 86-87 (Pa. Cmwlth. 1990), *affirmed on other grounds*, 605 A.2d 1198 (Pa. 1992).

in Act 129 or the Commission's *Smart Meter Implementation Order* mandated the use of a wireless AMI meter, which PPL Electric ultimately selected and has been deploying. Therefore, PPL Electric is not a state actor here under the facts of this case.

Moreover, even if the Company were a state actor, the Seventh Circuit Court of Appeals found that the collection of smart meter data by a city-owned public utility was a reasonable warrantless search. *See Naperville Smart Meter Awareness v. City of Naperville*, 900 F.3d 521, 527-29 (7th Cir. 2018). Thus, PPL Electric cannot violate the Complainants' constitutional rights by installing the new AMI meter.

2. Nothing Presented by the Complainant Demonstrates that the Commission Fails to Decide Cases on an "Individual Basis" and on the "Specific Allegations Presented"

The Complainant also alleges that the Commission fails to decide cases on an "individual basis" and on the "specific allegations presented." (Exceptions, p. 11.) Her only alleged support is that the Commission has not granted "an accommodation from the deployment of a smart meter" in other cases. (Exceptions, p. 11.)

Nothing in the record or in any Commission orders demonstrates that the Commission fails to thoroughly review the records of every case before it and render its decisions accordingly. The fact that no customer has received an "opt-out" of an AMI meter installation to date merely reflects: (1) the Commission lacks the authority to grant an "opt-out" of an AMI meter installation under Pennsylvania law[10]; and (2) the allegations that the new AMI meters cause, contribute to, or exacerbate adverse health effects are entirely unfounded.

3. The Complainant Erroneously Contends that the ALJ Applied an Incorrect Burden of Proof Standard

[10] The impact of the Commonwealth Court's recent decision in *Povacz* remains unclear. *See* note 7, *supra*.

The Complainant also claims that the ALJ "erred in requiring proof of causation." (Exceptions, p. 12.) According to the Complainant, she "should not be required to prove causation of harm"; rather, an alleged potential for the AMI meter to "expose her to a risk of harm" should be sufficient to meet her burden of proof. (Exceptions, p. 12.)

The Complainant's argument is without merit and should be denied. The ALJ properly relied on the Commission's precedent to find that the Complainant had the burden to "demonstrate by a preponderance of the evidence that" the exposure to RF fields "actually causes adverse health effects." (ID, p. 8.) In fact, the Commonwealth Court recently affirmed this burden of proof standard in *Povacz v. Pa. PUC*, Docket Nos. 492 C.D. 2019, *et al.*, pp. 18-21 (Pa. Cmwlth. Oct. 8, 2020). Thus, the ALJ applied the correct burden of proof standard in this proceeding.

4. The ALJ Correctly Held that the Commission Lacks Jurisdiction to Interpret and Enforce the ADA

The ALJ properly rejected the Complainant's arguments based on the ADA because the Commission lacks jurisdiction to interpret and enforce that federal law. (ID, pp. 15-16.) As a creature of statute, the Commission "has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication." *Feingold v. Bell*, 383 A.2d 791, 794 (Pa. 1977) (citations omitted). Nothing in the Pennsylvania Public Utility Code grants the Commission the ability to interpret and enforce the ADA. In fact, it is well-established that the Commission lacks subject matter jurisdiction to interpret and enforce that federal law. *See Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at *69 (Order entered May 3, 2018). As the Commission, held in *Frompovich*:

> [I]t is beyond the jurisdiction of Commission to determine whether the Complainant has a disability or a cause of action under the American with Disabilities Act. See I.D. at 18. If Ms. Frompovich believes that she has a valid ADA claim against PECO, she must work through the federal courts or one of the federal enforcement agencies, which include the Department of Labor, the Equal

> Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission or the Department of Justice, but not this Commission.

Frompovich, 2018 Pa. PUC LEXIS at *69. Therefore, the applicable federal agencies and courts have jurisdiction to interpret and enforce the ADA, not the Commission.

Based on the foregoing, the Commission should deny the Complainant's Exceptions Nos. 1, 3, and 6.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in the Initial Decision of Administrative Law Judge Elizabeth H. Barnes, the Company respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions filed by Kathleen R. Anthony and adopt the Initial Decision without modification.

Respectfully submitted,

Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID # 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Phone: 610-774-2599
Fax: 610-774-4102
E-mail: kklock@pplweb.com
mjshafer@pplweb.com

Devin T. Ryan (ID # 316602)
Garrett P. Lent (ID # 321566)
Lindsay A. Berkstresser (ID # 318370)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: dryan@postschell.com
glent@postschell.com
lberkstresser@postschell.com

Curtis S. Renner (ID # 326488)
Watson & Renner
1901 Pennsylvania Avenue, NW
Suite 1005 - ENS
Washington, DC 20006
Phone: 202-737-6302
E-mail: crenner@w-r.com

Attorneys for PPL Electric Utilities Corporation

Date: October 16, 2020