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November 2, 2020

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

**RE: Christopher and Valerie Watson v PECO Energy Company  
Docket No. C-2020-3021127**

Dear Ms. Chiavetta:

**PECO's Motion *In Limine* to Exclude Specified Evidence** is enclosed for filing. A Notice to Plead and a Certificate of Service precede PECO's filing.

Very truly yours,

/s/ Ward Smith

Ward Smith  
Counsel for PECO Energy Company

Enclosure

cc: Certificate of Service





**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>CHRISTOPHER AND VALERIE</b>	:	
<b>WATSON</b>	:	
<b>Complainants</b>	:	
	:	
<b>v.</b>	:	<b>DOCKET NO. C-2020-3021127</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**PECO’S MOTION *IN LIMINE* TO EXCLUDE SPECIFIED EVIDENCE**

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Pursuant to 52 Pa. Code § 5.103, PECO Energy Company (“PECO” or the “Company”) hereby files this Motion *In Limine* to Exclude Specified Evidence. Specifically, PECO seeks prehearing rulings to exclude the Complainants’ proffered testimony that power frequency electric and/or magnetic fields (“EMF”) from PECO’s electric distribution facilities have caused or will cause adverse health effects because the evidence proffered by Complainants in their pleadings and discovery is either not competent, hearsay, or both.

In support of its Motion, PECO states the following:

**I. BACKGROUND**

1. On August 3, 2020, PECO was served with the Formal Complaint of Christopher and Valerie Watson (the “Complainants”).

2. With respect to EMF, the Formal Complaint contains the following statements:

The previous owners’ son (Ryan Pollie) who lived in this home for ten years was just diagnosed with cancer in 2019. The research on childhood cancers associated with EMFs

and the proximity to my children's rooms makes me uncomfortable as a mother. (Attachment to ¶ 4)

PECO is interfering with the use of our land, by preventing us from moving ahead with our construction and forcing us to live just feet away from EMFs, which were never disclosed to us in an easement. (Attachment to ¶ 4)

These are high voltage wires which pose a health threat to my young children. My one year old son's bedroom sits right along side these lines. (¶ 5)

3. On August 24, 2020, PECO filed its Answer and New Matter.

4. On September 11, 2020 Complainants filed their Response to PECO's Answer and New Matter.

5. With respect to EMF, Complainants' Response to PECO's Answer and New Matter makes the following statements:

Specifically, this refers to language in the complaint stating "The previous owners son (Ryan Pollie) who lived in this home for ten years was just diagnosed with cancer in 2019." A piano tuner who came to my home told me he knew the previous owners, Shara and Bill Pollie, and their son had just been diagnosed with cancer and underwent surgery. A social media search confirmed this information with pictures of him recovering from his surgery in the hospital. He also wrote about his cancer diagnosis. I showed Mr Ward Smith from PECO these pictures when he came over to our home in talks about the electric wires. (Complainants' Response to PECO Answer, ¶ 6)

This refers to language from the formal complaint stating: "The research on childhood cancers associated with EMFs and the proximity to my children's rooms makes me uncomfortable as a mother." The basis for the discomfort is as follows:

7. A 2009 Update from The Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) of the European Commission states: "The past conclusion that extremely low frequency magnetic fields are possibly carcinogenic is still valid. This was concluded based on studies indicating that children exposed to relatively strong magnetic fields from power lines were more likely to develop leukemia. New studies on human populations indicate a possible increase in Alzheimer's disease arising from exposure to extremely

low frequency fields.”

[https://ec.europa.eu/health/scientific\\_committees/opinions\\_layman/en/electromagnetic-fields/index.htm#10](https://ec.europa.eu/health/scientific_committees/opinions_layman/en/electromagnetic-fields/index.htm#10)

A UK consumer advocacy organization, Powerwatch, reports the following regarding power lines, EMF and association between diseases: "Current research has mainly concerned magnetic fields, not only from high voltage power lines from the electricity supply in general. The evidence points towards an association between exposure to magnetic fields and childhood leukaemia (references below), adult leukaemia [Tynes 2003, O'Carroll 2008], neurodegenerative diseases (such as amyotrophic lateral sclerosis) [Feychting 2003, Hakansson 2003, Ahlbom 2001]..." and a few others. In addition, the organization states "A 2008 meta-analysis from Spain found a strongly statistically significant doubling in risk for Alzheimer disease (CI 1.51-2.80) [Garcia 2008]." <https://www.powerwatch.org.uk/elf/powerlines.asp#ref9>. (Complainants' Response to PECO Answer, ¶ 7)

6. On September 18, 2020, a Hearing/Cancellation Notice was issued, setting this matter for hearing on November 12, 2020.

7. On September 28, 2020, PECO served its Set I Discovery, Questions 1-9, on Complainants.

8. On October 10, 2020, the Complainants served their Answers to PECO's Set I Discovery.

9. With respect to EMF, Complainants' Answers to PECO's Set I Discovery make the following statements:

PECO I-1: a. Please identify each person whom you expect to call as an expert witness at hearing and state the subject matter on which the expert is expected to testify.

*At this time, we do not have any expert witnesses.*

b. For each expert so identified, state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

*Please see above.*

PECO I-2: Please identify each person whom you expect to call as a lay witness at hearing and state the subject matter on which the lay witness is expected to testify.

*At this time, we do not have any lay witnesses for the hearing.*

PECO I-4: Reference your Formal Complaint, attachment to ¶4, where you state: “The research on childhood cancers associated with EMFs and the proximity to my children’s rooms makes me uncomfortable as a mother.” Please provide copies of, or working internet links to, the research on childhood cancers associated with EMFs that you refer to in this statement.

*Please see WATSON RESPONSE TO PECO’S ANSWER AND NEW MATTER section number 7 for research comments and links.*

PECO I-5: Reference your Formal Complaint, ¶5, where you state: “These are high voltage wires which pose a health threat to my young children.” a. Please provide the basis for your statement that PECO’s facilities pose a health threat to your young children.

*Please see WATSON RESPONSE TO PECO’S ANSWER AND NEW MATTER section number 7.*

b. Please provide copies of, or working internet links to, all research and documents that you rely upon for your statement that PECO’s facilities pose a health threat to your young children.

*Please see WATSON RESPONSE TO PECO’S ANSWER AND NEW MATTER section number 7.*

PECO I-6: Reference your Formal Complaint, attachment to ¶4, where you state: “The previous owners son (Ryan Pollie) who lived in this home for ten years was just diagnosed with cancer in 2019.” a. Please state the form of cancer with which Ryan Pollie was diagnosed.

*We do not know the form of cancer Ryan Pollie has.*

b. Is it your contention that PECO’s electric distribution facilities caused or contributed to Mr. Pollie’s cancer?

*We do not know if the power lines contributed to or caused Ryan Pollie’s cancer, but the fact that he has cancer contributes to our concern.*

c. If so, please state the basis for that contention.

*Please see WATSON RESPONSE TO PECO'S ANSWER AND NEW MATTER section number 7.*

d. If so, please copies of, or working internet links to, all research or documents that you rely upon for that contention.

*Please see WATSON RESPONSE TO PECO'S ANSWER AND NEW MATTER section 7.*

10. On October 30, 2020, PECO filed a Complaint with the Court of Common Pleas, Montgomery County (the "Civil Complaint"). The Civil Complaint seeks a determination by the Court of Common Pleas that PECO has an irrevocable license to operate and maintain its electric distribution facilities on the Property or, in the alternative, that PECO has a prescriptive easement to operate and maintain its electric distribution facilities on the Property. The Civil Complaint also requests that the irrevocable license or prescriptive easement be recorded in the land records of Montgomery County.

11. On October 30, 2020, PECO filed a Motion to Stay Proceeding in this docket.

## **II. PECO'S MOTION *IN LIMINE* SHOULD BE GRANTED**

### **A. THE EVIDENCE THAT COMPLAINANTS HAVE PROFFERED REGARDING EMF AND HEALTH IS EITHER NOT COMPETENT EVIDENCE OR IS INADMISSIBLE HEARSAY**

12. The Complainants allege (Complaint, ¶ 5) that PECO's electric distribution facilities "pose a health threat to my young children."

13. The Commission has held, in analogous situations, that in order to prove that radio-frequency ("RF") transmissions from PECO's AMI meters has caused or will cause adverse health effects, Complainants must introduce evidence into the record to demonstrate,

by a preponderance of the evidence, that there is a conclusive causal connection between RF and adverse health effects. *Povacz v PECO Energy*, C-2015-2475023 (Opinion and Order, March 28, 2019 at 28) (“[T]he Complainant must demonstrate by a preponderance of the evidence a ‘conclusive causal connection’ between the low-level RF exposure from a PECO smart meter and the alleged adverse human health effects.”)

14. The Commonwealth Court upheld this standard on October 8, 2020 in the *Povacz* AMI appeal, stating: “The PUC found the ALJ correctly imposed a burden of proof requiring Consumers to demonstrate adverse health effects by a preponderance of the evidence. This required Consumers to prove that there was a “conclusive causal connection” between RF exposure from smart meters and adverse human health effects. . . . We therefore affirm the burden applied by the PUC concerning proof of harm from RF emissions.” *Povacz et al. v PaPUC*, 492 C.D. 2019 (October 8, 2020 slip op. at 19-21).

15. The standard of proof set forth in *Povacz* – that Complainants must prove, by a preponderance of evidence, that there is a conclusive causal connection between exposure and adverse human health effects – was originally established in Commission cases involving claims that 60 Hz power frequency EMF would harm the health of residents near those lines. *See Povacz v PECO Energy*, C-2015-2475023 (Opinion and Order, March 28, 2019 at 21) (“the *Woodbourne-Heaton* proceeding involved “PECO’s reconstruction of its Woodburne-Heaton 230 kV transmission line”); *id.* at 28 (“We agree with PECO’s position that the standard of review under Section 1501 that we articulated in the *Woodbourne-Heaton Final Order* applies here.”) The standard of proof that was recently affirmed by the Commonwealth Court in *Povacz* was thus derived from, and directly applies to, claims that power frequency EMF will cause

harm, and thus is the applicable standard to use in evaluating Complainants' proffer of evidence, as made in their pleadings and discovery answers. In order to prove that PECO's electric distribution facilities "pose a health threat to my young children," Complainants must demonstrate, by a preponderance of the evidence, that there is a "conclusive causal connection" between exposure to power frequency EMF from PECO's distribution facilities and adverse human health effects.

16. Complainants' discovery answers and pleadings describe the evidence that they will adduce to meet this standard. They will not offer expert testimony (nor any lay testimony other than their own testimony). Instead, they will offer their own lay testimony. In their pleadings and discovery, they disclosed that their lay testimony will be based upon two internet sources (a 2009 update from The Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) and the website of a "UK consumer advocacy organization, Powerwatch") and upon anecdotal evidence that a prior resident at their address, Ryan Pollie, has cancer.

17. As to the Complainants' proffered lay testimony, the Commission has previously held that lay testimony does not constitute competent evidence to demonstrate that there is a conclusive causal connection between exposure and adverse health. *See Gavin v PECO*, C-2017-2616249 (Opinion and Order, July 11, 2019 at 29) (emphasis added; footnotes and internal record citations omitted): ("In presenting her case, the Complainant did not offer any medical or scientific expert opinion testimony on the issue of whether the Complainant's exposure to the RF emissions from PECO's AMI meters caused or will cause adverse health effects for the Complainant. We recognize that the Complainant and her daughter attempted at the hearing to

offer their lay opinions on the issue of a causal connection between RF emissions from PECO's AMI meters and the Complainant's health symptoms, based on their review of various scientific/medical studies and articles gathered from internet research they conducted. However, at the hearing the ALJ properly sustained PECO's objection over admitting such opinion testimonies given that, pursuant to Pennsylvania Rule of Evidence 701, a witness that is not testifying as an expert may not testify in the form of opinion if it is based on scientific, technical, or other specialized knowledge within the scope of Rule 702 (relating to expert opinions). The Complainant and her daughter are not experts in this proceeding. *As the ALJ properly recognized in her Initial Decision, the Complainant's and her daughter's non-expert opinion testimonies do not constitute competent evidence on the issue of a causal connection between RF emissions from smart meters and adverse human health effects, given that the bases of such opinions included the scientific, technical or other specialized knowledge laid out in the studies and articles gathered from their internet research.*

18. On October 8, 2020,<sup>1</sup> the Commission reaffirmed the *Gavin* holding that lay testimony is insufficient to demonstrate a conclusive causal connection, stating: "We have previously concluded that lay witness testimony is insufficient to establish a conclusive causal connection between adverse health effects and the RF fields from an AMI meter. *See Theresa Gavin v. PECO Energy Company*, Docket No. C-2017-26116249 (Opinion and Order entered July 11, 2019). Rather, an unequivocal expert opinion, offered to a reasonable degree of medical or scientific certain[y], is required to satisfy a Complainant's initial burden of proof and to shift

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<sup>1</sup> Although the *Hess Reconsideration Order* was voted on at the October 8, 2020 Public Meeting, and notes on its face that it was Adopted and Entered on October 8, the Daily Actions tab of the *Hess* docket on the PUC's website states that the Order was not made public, via publication on the web, until October 20, 2020.

the burden of production to the respondent. *See Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (Order entered March 28, 2019) at 61-62 (citations omitted).” *Hess v PPL*, C-2018-3003337 (Opinion and Order on Reconsideration, October 8, 2020 at 12.) Similarly, in the instant case the lay testimony of Complainants is not competent evidence of, and is insufficient to meet their initial burden of proof of, a conclusive causal connection.

19. As for the two internet research sources listed by Complainants in their pleadings and discovery answers, the Commission has previously ruled that such sources may not be introduced into evidence by a lay person to demonstrate a conclusive causal connections because such sources constitute impermissible hearsay. *See Gavin* at 29-30 (emphasis added; footnotes and internal record citations omitted): (“Moreover, while some of the studies and articles relied upon by the Complainant and her daughter were admitted into the record collectively as Complainant Exhibit 1, *the articles and studies constitute out-of-court statements, or hearsay, that does not fall within one of the recognized exceptions to the rule against hearsay. PECO properly objected to the Complainant’s documents, submitted collectively as Complainant Exhibit 1, because the authors of these hearsay statements did not testify, therefore denying PECO the ability to test the veracity of their statements. The ALJ properly accepted into the record the Complainant’s documents not for the truth of the matter but to show that the Complainant had researched the issue; see Walker v. Unemployment Compensation Board of Review, 367 A. 2d 366, 370 (Pa. Cmwlt. 1976) (Walker) (citations omitted) and Chapman v. Unemployment Compensation Board of Review, 20 A. 3d 603, 610, fn. 8 (Pa. Cmwlt. 2011) (Chapman). Thus, we cannot rely upon the articles and studies in Complainant Exhibit 1 for the truth of the factual assertions contained therein on the issue of a causal connection between RF*

emissions from the AMI meters and adverse human health effects. We can and do, however, give weight to this evidence for the limited purpose of showing that the Complainant and her daughter had researched the issue.”)

20. There is no material dispute in the instant proceeding as to whether the Complainants have conducted internet research on EMF and health. The rationale of *Gavin* of allowing internet sources into the record “for the limited purpose of showing that the Complainant . . . had researched the issue” is thus not applicable to the instant case.

21. Indeed, the two internet sources identified by Complainants in their discovery responses are textbook examples of why it is inappropriate to allow the introduction of hearsay documents as support for testimony by lay witnesses who are attempting to demonstrate a conclusive causal connection.

22. First, Complainants state that they rely upon a January 19, 2009 “Update from The Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR), noting that in 2009 SCENIHR stated that: “The past conclusion that extremely low frequency magnetic fields are possibly carcinogenic is still valid. This was concluded based on studies indicating that children exposed to relatively strong magnetic fields from power lines were more likely to develop leukemia. New studies on human populations indicate a possible increase in Alzheimer's disease arising from exposure to extremely low frequency fields.” But six years later, on January 20, 2015, SCENIHR issued a new report, stating that “The purpose of this [2015] Opinion is to update the SCENIHR Opinions of 19 January 2009” – and the 2015 Opinion stated, as to research on exposure to low-frequency magnetic fields and cancer in general and childhood leukemia in particular that: “As stated in the previous Opinions, no mechanisms have been

identified and no support is existing from experimental studies that could explain these findings, which, together with shortcomings of the epidemiological studies *prevent a causal interpretation.*“

[https://ec.europa.eu/health/scientific\\_committees/consultations/public\\_consultations/scenihir\\_consultation\\_19\\_en](https://ec.europa.eu/health/scientific_committees/consultations/public_consultations/scenihir_consultation_19_en) (pp. 4, 7; emphasis added). The SCENIHR reports as a whole therefore cannot be used to demonstrate a conclusive causal connection. This example demonstrates the wisdom of the Commission’s rationale that lay persons should not be allowed to introduce documents, such as the 2009 SCENIHR Report, that Complainants have culled from the internet because, since the authors of those studies would not be present in the hearing room to be questioned, PECO would not have the opportunity to test the veracity of statements made in the 2009 Report. It also demonstrates why lay persons, such as Complainants, are not allowed to utilize documents that they have culled from the internet to form an opinion of a conclusive causal connection – they do not possess the requisite “scientific, technical or other specialized knowledge” that is needed to interpret research results and form a proper expert opinion.

23. The Complainants’ intention to rely upon the “Powerwatch” website to demonstrate a conclusive causal connection suffers from a similar infirmity. Complainants themselves refer to Powerwatch as “a UK consumer advocacy organization.” The Complainants have thus admitted that the authors of the Powerwatch materials have an advocacy viewpoint, making it doubly important that PECO be allowed to question the authors of the Powerwatch materials to “test the veracity of the statements made” by them. The fact that the authors of the Powerwatch site will not appear for cross-examination thus renders the Powerwatch materials

inadmissible hearsay that cannot be used to demonstrate that exposure to EMF has a conclusive causal connection to adverse health.

24. As for the proffered anecdotal evidence regarding the cancer of Ryan Pollie, that evidence suffers from three infirmities that render it inadmissible. First, Complainants frankly admitted in their discovery responses that “[w]e do not know if the power lines contributed to or caused Ryan Pollie’s cancer.” That admission renders testimony regarding Ryan Pollie’s cancer inadmissible to demonstrate that there is a conclusive causal connection. Second, Complainants’ knowledge regarding Ryan Pollie’s cancer is at least triple hearsay: they admitted in discovery that their knowledge came from an unnamed piano tuner (who will not be present at hearing to be questioned, thus creating the first level of hearsay); the unnamed piano tuner’s knowledge came from discussions with Ryan Pollie’s parents (who will not be present at hearing to be questioned, thus creating the second level of hearsay); the parents’ knowledge in turn must have come from discussions with either Ryan Pollie’s doctors (who will not be present at hearing to be questioned, thus creating the third level of hearsay) or from discussions with Ryan Pollie himself (a parallel, third level of hearsay) who in turn must have received information from his doctors (who will not be present at hearing, thus creating a potential fourth level of hearsay). PECO will have no opportunity to “test the veracity of statements made by” any of these individuals, and testimony based upon this sequence of out-of-court statements is thus inadmissible hearsay. Third, even the Complainants were to allege that Ryan Pollie’s cancer was caused or contributed to by PECO’s electric distribution facilities, and even if they were to claim to have firsthand knowledge regarding Ryan Pollie’s cancer, their testimony would still be inadmissible to

demonstrate a conclusive causal connection because they are lay persons, and are not competent to offer opinions of a conclusive causal connection.

25. In sum, Complainants should not be allowed to present their proffered evidence in an attempt to demonstrate that there is a conclusive causal connection between exposure to EMF from PECO's electric distribution facilities and adverse human health (including cancer) because their proffered testimony, as set forth in their pleadings and discovery answers, is (a) lay testimony that is not competent to demonstrate a conclusive causal connection; (b) inadmissible hearsay; or (c) both.

**B. GRANTING PECO'S MOTION WILL CREATE ADMINISTRATIVE EFFICIENCY**

26. The issues raised in this Motion are evidentiary objections. As such, PECO could have preserved these objections until hearing and made them at that time. However, PECO has chosen to present these objections via this Motion *in Limine* because it believes that presenting the objections through the Motion will create administrative efficiency in the conduct of the hearing in this matter.

27. First, these objections involve complex issues of law that are, at least in part, based upon Commission and Commonwealth Court decisions issued or affirmed within the last several weeks, and with which Your Honor and the Complainants thus may not have detailed familiarity. By providing its arguments in a prehearing Motion, PECO is affording Your Honor and the Complainants the opportunity to research and review the underlying law on these issues, rather than having to respond and rule at the moment (or to defer ruling until after the hearing).

28. Second, because these evidentiary objections are complex and voluminous, fully stating them, responding to them, and ruling on them at the hearing would have consumed a substantial part of the scheduled hearing time. If these objections are resolved on a prehearing basis, hearing time can be preserved for the presentation of evidence.

29. Third, prehearing resolution of these issues will materially affect the hearing preparation required by both parties. Simply, if Your Honor rules that Complainants will be allowed to present the above-noted testimony, then Complainants will need to prepare their testimony regarding EMF, PECO will need to prepare cross-examination regarding EMF and, importantly, PECO may need to retain and present the testimony of expert witnesses to rebut Complainants' EMF testimony. Conversely, if Your Honor grants PECO's Motion, none of those tasks will need to be undertaken.

### III. CONCLUSION

Based upon the foregoing, PECO respectfully requests that Your Honor grant PECO's Motion *In Limine* to Exclude Specified Evidence.

Respectfully submitted,

/s/ Ward Smith

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*Counsel for PECO Energy Company*

November 2, 2020

