BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Judith D. Hendin,	:	
	:	
Complainant	:	
	:	
v.	:	**Docket No. C-2018-3003324**
	:	:
Metropolitan Edison Company,	:	
	:	
Respondent.	:	

EXCEPTIONS OF COMPLAINANT JUDITH D. HENDIN
TO THE INITIAL DECISION OF DEPUTY CHIEF ADMINISTRATIVE
LAW JUDGE JOEL H. CHESKIS ISSUED AUGUST 7, 2020

Dated: August 27, 2020

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I. EXCEPTIONS

A. Exception No. 1: The ALJ Misrepresented Ms. Hendin's Attitude in This Case

The Initial Decision said, "Met-Ed averred that Ms. Hendin has refused to allow the company access to install a smart meter at her home." *Hendin* Decision at 1. This misrepresents Ms. Hendin's attitude with Met-Ed. She sought amicably to find a resolution to this issue. She did not refuse access. She simply phoned Met-Ed and explained that a smart meter had previous made her very sick and asked to opt out of having one installed on her residence. She was advised to file a "formal complaint." And so the saga began.

B. Exception No. 2: The ALJ Erred in Denying Some of Ms. Hendin's Late-filed Exhibits

In his Order of June 18, 2020, the ALJ did not accept 19 late-filed exhibits because "Ms. Hendin was not prepared during the hearing to use these exhibits when Dr. Israel appeared." *Order Granting in Part and Denying in Part Motion for Admission of Late-filed Exhibits and Motion to Strike* at 14. This statement is completely untrue. In the 70 pages of questions Ms. Hendin had prepared for Dr. Israel, every one of these exhibits was going to be discussed in cross-examination.

Ms. Hendin relied on the hearing schedule of two days, December 19 and 20, 2019, to give fair and ample time for this. But on the second day, the sole witness, Dr. Israel, could stay only a short time because of a personal obligation that had arisen. Transcript at 228. The hearing was then re-scheduled for January 24, 2020, and again Ms. Hendin expected to have time for full cross-examination.

In his Decision, Judge Cheskis said, "Ms. Hendin had an opportunity to present these exhibits as part of her direct case but did not do so." *Id*. at 15. Her cross-examination of Dr. Israel on January 24 was cut short by Judge Cheskis. Right in the middle of cross-examination about the very significant National Toxicology Program report, Judge Cheskis said, "Dr. Israel, I'm going to interrupt you for one second. Actually, I'm going to interrupt you for good. But it is 11 o'clock now, and I think we've reached our limit on pursuing this issue on cross-examination." Transcript at 280. So, though Ms. Hendin had planned to introduce all her exhibits into the record in the hearing, the whole procedure was cut short by the judge.

Further, the judge's Order Granting in Part and Denying in Part was issued ***after*** both the Main and Reply Briefs were due. Without having received a decision, Ms. Hendin wrote the briefs using these exhibits. To find out after the due dates that some of the exhibits were denied put Ms. Hendin at a terrible disadvantage because some of her arguments had been constructed based on these exhibits. For all these reasons, these 19 exhibits should be allowed. In any case, only five (5) of these 19 exhibits are referenced in these Exceptions.

C. Exception No. 3: The ALJ Erred in Unfairly Presenting the Findings of Fact, Showing Obvious Bias in Favor of Met-Ed

In reading the Findings of Fact in the Initial Decision, something seemed out of balance. Looking at specifics revealed that the Findings of Fact are blatantly biased. Judge Cheskis is incapable of unbiased decision-making in this case. The following chart concretizes this bias:

Witness	Transcript Pages	Total Pages of Transcript	Percentage of Total Transcript		Number of Points in Findings of Fact	Percentage of Findings of Fact
Ms. Hendin	pp. 22-79	57	25%		10	15%
Dr. Kracht	pp. 83-133	50	22%		7	11%
			Sub-total: 47%			**Sub-total: 26%**
Mr. Ahr	pp. 136-166	30	13%		17	26%
Dr. Davis	pp. 168-194	26	12%		23	36%
			Sub-total: 25%			**Sub-total: 62%**
Dr. Israel	pp. 205-238; pp. 251-280	62	**28%**		8	**12%**
TOTALS:		225 pages	100%		65 *	100%

* Of the 70 total Findings of Fact, this count omits the first 5 because they are non-substantive points, such as #1, "The Complainant in this case is Judith Hendin," and #2, "The Respondent in this case is Metropolitan Edison Company."

Biases are evident in the amount witnesses testified compared with the amount they are represented in the Findings of Fact:

- Though Ms. Hendin's and Dr. Kracht's testimonies together occupied 47 percent of the total transcript, they were allotted only 26 percent of the Findings of Fact.
- Conversely, though Mr. Ahr's and Dr. Davis' testimonies together occupied only 25 percent of the transcript, they were allotted 62 percent of the Findings of Fact.

These purported Findings of Fact were further skewed in favor of Met-Ed:

- Though Dr. Israel's testimony occupied 28 percent of the transcript, he was only mentioned in 12% of the Findings of Fact, thus omitting many details of his testimony. This is probably because he was the subject of major critiques in Ms. Hendin's briefs, which called into question almost all of his testimony. *Hendin* Main Brief at 18, 23, 24, 26, 27, 48-63, 64, 66; Reply Brief at 26-28. So to quote him in the Findings of Fact would have been blatantly preferential.
- In the large number of Findings of Fact allotted to Dr. Davis, the judge cited almost every page of Davis' testimony, literally page by page (26 pages of testimony, 24 Findings of Fact), as if his testimony was taken as fact, and not subject to review. Once again this shows favoritism in this supposedly unbiased judicial procedure.
- Similarly, statements made about Mr. Ahr in Findings of Fact show bias, such as #32, "The smart meters deployed by Met-Ed comply with all safety requirements and standards established by the Federal Communication Commission (FCC)…." This is a major contention in this case and should not be presented as a "fact."
- In stark contrast to all these Findings of Fact attributed to Met-Ed's witness, not one of Ms. Hendin's many statements on the same subjects was included.

Pages 3 – 5 have been removed due to being considered confidential information.

Dr. Davis' conclusions about smart meter safety are based on FCC guidelines, but these guidelines lack any specific reference to smart meters and the unique placement of those meters on individuals' homes. Met-Ed has failed to address the actual exposure based on the distances that individuals with smart meters on their homes will experience. *Hendin* Reply Brief at 32.

Of paramount importance, **Met-Ed explains this in its Smart Meter Radio Frequency Fact Sheet, where it says, "RF exposure depends partly on the proximity of the RF source to a person."** Met-Ed's Smart Meter Fact Sheet goes on to admit, **"Smart meters are usually located on the outside of your house in a metal box, away from your daily routine activity."** *Hendin* Exhibit 32. (Note: The smart meter that Met-Ed installed on Ms. Hendin's next-door neighbor's house is not in a metal box.) Clearly, Met-Ed knows the danger of living and working too close to a smart meter. The proposed smart meter on Ms. Hendin's residence would be hazardously close to her daily actitivies as well as her sleeping place, creating dangerous levels of exposure 24 hours a day, every day. Yet Met-Ed would knowingly subject Ms. Hendin to this radiation. This is unconscionable.

G. Exception No. 7: ALJ Cheskis Erred in Not Recognizing That Radiofrequency Emissions from Smart Meters Differ from Radiofrequency Emissions from Other Sources

When the ALJ compared Ms. Hendin's stove clock or wifi to smart meter radiation (*Hendin* Decision at 31), he demonstrated his limited understanding of EMFs. This is understandable because the utility companies have deliberately obfuscated this information. Even a basic understanding is necessary in order to adjudicate this case.

Not all RF-emitting devices are equal. The number of emissions distinguishes a smart meter from other EMF-emitting devices, such as cell phones and wifi routers. The amount of RFs emitted by a smart meter was submitted in in the PUC Docket of Frances Hriadil. *See, Hriadil v. Duquesne Light Company*, Docket No. C-2016-2571726, New Matter, Jan. 24, 2017 at 6-7. In the titles of his graphs, Dr. Davis said Met-Ed uses Itron meters. *Davis* Exhibits CD-2, CD-3, CD-4. The Hriadil case specified emissions from an Itron meter like the one Met-Ed wishes to install on Ms. Hendin's home. According to an Itron White Paper cited by Mr. Hriadil, the Itron meter emits on average 1,268 times a day to communicate with the mesh, but could emit upwards of 21,000 times a day. Duquesne Light Co. uses the same Itron meters that Met-Ed typically uses.

These specific numbers may vary by make of smart meter, yet all generate these brief, frequent bursts. In a court-ordered report, Pacific Power and Gas (PG&E) showed that, in a 24-hour period, a smart meter emitted radiation bursts at a rate of 9,600 times per day, with a maximum daily transmission of 190,000 emissions. *Hendin* Main Brief at 25; Exhibit X33. *Hendin* Main Brief at 25; Exhibit Xl7, digital at 1513. These numbers can be used to determine yearly exposure: 9,600 daily bursts amount to ***3.5 million hits a year***, and 190,000 daily bursts amounts to more than ***69 million hits a year***. No wonder so many people report physical symptoms after exposure to a smart meter.

In either case, we're still talking about thousands of emissions from Met-Ed's meter each day, day and night, which amounts to millions of hits per year. This is what the PUC is giving permission for Met-

Ed to inflict on Ms. Hendin, against her will, even though her medical records show unequivocally that she experienced harm after previous exposure to a smart meter.

These numbers are manipulated by the electric companies and their witnesses. Dr. Davis perjured himself when he said, "[A] Smart Meter only emits…infrequently." Transcript at 175. Even more salient, Met-Ed/FirstEnergy's "Smart Meter Radio Frequency Fact Sheet" states, "RF exposure from a smart meter is far below—and more infrequent—than other electric devices." *Hendin* Exhibit 32. It even led the judge to conclude, "I agree with Met-Ed that Ms. Hendin is exposed to more electromagnetic frequencies on a daily basis by electronic devices other than smart meters than she argues in this case, and at much higher levels and longer intervals than those emitted by smart meters." *Hendin* Decision at 30. Yet all RF frequencies are not alike. Smart meters are unique in that they emit a vast number of RF bursts each day. The misleading information from Dr. Israel and Met-Ed is dangerously wrong.

These bursts of radiation are short, on average about 42 milliseconds, which is 0.042 seconds, but could be as long as 150 milliseconds. If one were to look only at the length of time during which RFs are being emitted, the total amount of time is on the order of a few minutes, even when there are thousands of daily bursts. But it is not the total exposure time in a day that is critical here. ***It is the thousands of bursts each day— including and especially through the night when the body is conducting repairs—that constitutes the crucial difference between smart meters and other RF-emitting devices like cell phones, wifi, etc***. Imagine radiation bursts coming at you 1,268 times a day, up to 21,000 times a day. Ms. Hendin's own medical records show that her body cannot withstand this overwhelming onslaught.

H. Exception No. 8: The ALJ Misrepresented Ms. Hendin's Cooperation in Trying to Find a Solution to the Possible Relocation of the Smart Meter

Because of this concern about distance, Ms. Hendin cooperated with Met-Ed to explore the possibility of finding another location for the proposed meter. The ALJ gave a biased picture of this when he quoted Met-Ed's Reply Brief in saying "that it was unable to relocate the meter because Ms. Hendin was un-responsive in those discussions regarding relocation." *Hendin* Decision at 40. By "un-responsive," they meant that she would not do what they wanted. Mr. Ahr is quoted as saying that, after meeting with a Met-Ed "designer"—"designer" being an elegant term for an employee who works with the location of poles, meters, and such—"the company never heard back from her." *Id.* He added, "She did not pursue the matter further." *Id.* at 41.

Ms. Hendin is offended by this misrepresentation. Here is what actually happened:

- ✓ Ms. Hendin called and spoke several times with Ann Bartolacci, the Met-Ed employee Mr. Ahr referred to, and they arranged a time to meet.
- ✓ On August 31, 2018, Ms. Hendin met with Ms. Bartolacci and another Met-Ed employee named John. They walked around the property discussing possible relocation sites for a smart meter that would be a safe distance from her residence, the preferred distance being at least 50 feet. *Hendin* Statement at 7. Every time Ms. Hendin offered a suggestion, such as placing the meter on an existing Met-Ed utility pole, it was declined as being against company policy.
- ✓ Met-Ed said the only possibility was for Ms. Hendin to put a pole of her own in the ground, 50 feet away, on which a meter would be placed. The pole would need to be two feet deep.

- ✓ Ms. Hendin explained that the entire ridge on which her residence sits is composed of an extremely hard rock called "Eastonite." Every time drilling had been done on the property, it encountered this rock, which entailed extended drilling times, costing tens of thousands of dollars. Drill bits literally broke off in the process.
- ✓ Ms. Bartolacci said that the pole would also need to be placed next to the road above the property so it could be reached easily by Met-Ed employees. At that location the ridge slopes steeply at a 45-degree angle, making drilling difficult.
- ✓ This would also place the pole amongst a closely clumped group of tall trees, which could possible damage them. It would also place the pole next to an old stone wall that might be damaged by the vibrations of drilling, which has happened in the past.
- ✓ Ms. Hendin asked for a specification sheet of what would be required in meter relocation so she could continue to consider it, and was given the 7-page document.
- ✓ Ms. Hendin was told she would need to hire a licensed electrician to do the work. Then Met-Ed would connect the wire.
- ✓ Continuing to explain what would be involved in installing a pole, Ms. Bartolacci said would be necessary to run a wire to the pole. The wire could either be above ground or underground. Being underground would protect the wire, but, like the pole, the underground wire would need to be two feet deep. It would obviously be impossible to dig a 50-foot trench, two feet deep, into solid rock.
- ✓ If the wire were run aboveground, Met-Ed would no longer be responsible for the wire. It would be Ms. Hendin's responsibility. She was open to this.
- ✓ Because Ms. Hendin rents, she had to ask permission from the property owner about pursuing the possibility of insuring the wire. He was unwilling to take on the responsibility of the wire, for a number of valid reasons.
- ✓ Ms. Hendin then contacted several insurance carriers to try to find one that would offer insurance for this wire. She spoke twice with FirstEnergy's "Exterior Electrical Line Protection Plan" office, but they said they would not cover this wire. She did not find any other insurance company that would cover the wire if it were damaged due to a "natural disaster," such as by one of the many tall trees on the property.
- ✓ Two weeks later, on September 17, 2018, Ms. Hendin again called Ms. Bartolacci and asked questions about the spec sheet, particularly about the minimum requirement of two feet down—a veritable impossibility on this land. During the conversation, Ms. Hendin offered another possible solution: Would it be possible to run a piece of strong tubing along the ground that could encase the wire, and thus forego drilling? No, she was told, this would not be allowed. At that point, Ms. Hendin saw no other way forward.
- ✓ Several months later she tried once more. On June 14, 2019, she met with Ms. Bartolacci as well as Met-Ed's lawyer, Tori Giesler, and Ms. Hendin's counsel. They all walked the property, Ms. Hendin and her counsel offering possible solutions, Ms. Bartolacci explaining that none were possible. (This is not meant to fault Ms. Bartolacci. She was only carrying out company policy.)
- ✓ At this time, Ms. Hendin asked if anyone present had any suggestions about insurance coverage. No one did.
- ✓ At the end of that meeting, Ms. Hendin said there didn't seem to be any solution. She thought that was clear.

Hendin Main Brief at 64-65.

Thus, Ms. Hendin was hardly "un-responsive" in her discussions with Met-Ed. The ALJ said, "The Commission strongly encourages settlements." *Hendin* Decision at 41. Yet Met-Ed did not demonstrate any flexibility to consider viable options that would meet the requirements of this terrain.

As for the Povacz case that the ALJ cited (*Id.* at 40-41.), everything discussed here demonstrates that one cannot look at the issue of relocation without looking at the specifics of an individual property. The dangerous proximity of the proposed location of the smart meter to Ms. Hendin's daily activity and nighttime sleep demands the meter be relocated, yet the topography of the property prohibits a relocation that meets Met-Ed's requirements. Hence, the best solution that will ensure Ms. Hendin's safety is no smart meter at all. Both Section 1501 of the Public Utility Code and Fourteenth Amendment protect Ms. Hendin's rights in this regard.

I. Exception No. 9: Judge Cheskis Erred in Equating "Bodily Integrity" with "Invasion of Privacy," and in His Comparison of Two Legal Cases and Two Constitutional Amendments

Judge Cheskis said, "Ms. Hendin's argument assumes that the smart meter proposed to be installed at her residence by Met-Ed will invade her bodily integrity. Yet, Ms. Hendin did not provide any record evidence to demonstrate that such an invasion would occur." *Id.* at 43. Let us clarify what "bodily integrity" is. The principle of bodily integrity sums up the right of each human being to autonomy and self-determination over their own body. It considers an unconsented physical intrusion as a human rights violation. The radiation emitted by a smart meter would thus be a violation of bodily integrity.

When the judge said, "Ms. Hendin did not provide any record evidence to demonstrate that such an invasion would occur," he demonstrated a basic lack of knowledge. It is common knowledge that almost all forms of electromagnetic radiation are invisible (except for visible wavelengths), and that RF radiation in the microwave region in particular impinges on and penetrates our bodies when we are exposed to them. Perhaps the ones we are most familiar with are x-rays, which enter the body and produce an internal image. Every study cited in this case, from the 25-million-dollar National Toxicology Program (NTP) study conducted over 10 years (*Hendin* Main Brief at 26-27, 58; Transcript at 236-238, 273-280), to the weak studies presented by Dr. Israel—all these studies subjected animals' bodies to radiofrequencies and monitored the effects of those RFs after they impinged on and entered the rats' bodies. Those frequencies didn't just linger outside the animals' bodies. They went inside. The NTP study concluded definitively that RF radiation from cell phones causes cancer. Therefore, a smart meter emitting radiofrequencies would invade Ms. Hendin's body, and would violate her rights to protect her bodily integrity.

Ms. Hendin argued that she cannot be forced to accept a smart meter at her residence in violation of her due process rights, referring to Article 1, Section 11 of the Pennsylvania Constitution and the Fourteenth Amendment of the United States Constitution. *Hendin* Decision at 42, *Hendin* Main Brief at 65.

In discussing due process, Judge Cheskis cited two cases, Naperville and Phillips. *Naperville Smart Meter Awareness v. City of Naperville*, 900 F.3d 521, 527-529 (7th Cir. 2018) (Naperville); *Phillips v. County of Allegheny,* 515 F.3d 224, 235 (3d Cir. 2008). The ALJ stated that the Naperville case would be more pertinent because it pertained specifically to smart meters, whereas the Phillips case did not. However, the Phillips case is very pertinent because it was about "bodily integrity," which is relevant to

Ms. Hendin, whereas the Naperville case was about the fact that a smart meter collects customer data, and as such is an "invasion of privacy." A smart meter does both: it irradiates the body, and it also steals personal information. (Ms. Hendin chose not to include the privacy concern in this case, nor did she include other grave concerns about smart meters, such as the fire hazard they present and their susceptibility to hacking. This case focuses on the body, her area of professional expertise and her experience with a smart meter.) Protecting one's body is not the equivalent of securing one's privacy. Thus, the judge erred in viewing bodily integrity as the same as invasion of privacy, through data collection.

In the same vein, the application of the Fourth Amendment in the Naperville case is also not relevant here. Naperville was about the data-collection capacity of smart meters, not their harm to health. The Fourth Amendment states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." In determining whether the data collection capacity of a smart meter is constitutional, the Fourth Amendment certainly applies. In determining the protection of bodily integrity, it does not. Therefore, Judge Cheskis' statement that, "The same governmental interests found in *Naperville* apply here" (*Hendin* Decision at 43) is incorrect.

Rather, we call the judge's attention to the other case Ms. Hendin cited in her brief on this issue, *in re Cincinnati Radiation Litigation,* 874 F. Supp. 796, 810-81 1 (S.D. Ohio 1995). *Hendin* Main Brief at 65. Significantly, the ALJ did not include this important case in his Decision.

Unlike Naperville, the *Cincinnati* case is directly relevant because it concerns radiation, and smart meters emit radiation. This case examined the design and implementation of experiments from 1960 to 1972 to study the effects of massive doses of radiation on human beings in preparation for a possible nuclear war. The radiation to which these people were exposed was described as affecting their bodily integrity. *Cincinnati* states:

> The right to be free of state-sponsored invasion of a person's bodily integrity is protected by the Fourteenth Amendment guarantee of due process. In *Albright v. Oliver,* 510 U.S. 266, 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994), Chief Justice Rehnquist, writing for the Court, specifically noted that "the protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, *and the right to bodily integrity.*" Citing *Planned Parenthood v. Casey,* 505 U.S. 833, 112 S. Ct. 2791, 2804, 120 L. Ed. 2d 674 (1992) (emphasis added) ….
>
> > It bears repeating…. The integrity of the individual's person is a cherished value of our society. That we hold today that the Constitution does not forbid the state's minor intrusions into an individual's body under strictly limited conditions in no way indicates that it permits more substantial intrusions or intrusions under other conditions.' *See United States Supreme Court, Schmerber v. California (1966)* at 772, 86 S. Ct. at 1836….
>
> When an individual's bodily integrity is at stake, a determination that the state has accorded adequate procedural protection should not be made lightly…. [B]odily invasions often cannot be readily remedied after the fact through damage awards in the way that most deprivations of

> property can… *Parratt v. Taylor,* 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981) … This is precisely what the Supreme Court held in *Washington v. Harper,* 494 U.S. at 210, 110 S. Ct. at 1030-31….

In re Cincinnati Radiation Litigation, cited in *Hendin* Main Brief at 65.

The Commission's interpretation of Act 129, which requires them to deny Pennsylvania citizens constitutionally-protected rights, must fail. As such, Ms. Hendin cannot be forced to accept a smart meter at residence in violation of her due process rights to protect her bodily integrity. *Id*.

J. Exception No. 10: The ALJ Erred in Ignoring Ms. Hendin's Evidence That Current FCC Guidelines Are Inadequate to Protect Human Health

Ms. Hendin spent considerable time explaining why the FCC guidelines are inadequate, citing many sources. *Hendin* Main Brief at 19, 33, and 65; Reply Brief at 29-34. Not a single point she made was acknowledged in the Decision. Findings of Fact No. 32 in the Decision said, "The smart meters deployed by Met-Ed comply with all safety requirements and standards established by the Federal Communication Commission (FCC)…." Later, on page 30 of his Decision, ALJ Cheskis quoted Dr. Davis as saying that "at only one meter (39.37 inches) away from an Itron meter the radiofrequency field levels for the LAN radio are 62,000 times smaller than the FCC's safety standards and for the Zigbee radio are 527,000 smaller than the FCC's safety standards." *Ahr* Statement at 11-12.

This sounds impressive, but three elements are wrong. First, while this is what Dr. Davis said during the hearing, one of his exhibits gave a completely different figure, stating that the PEAK emission values from the Itron smart meter at one meter distance were only "65 times smaller than FCC safety standard," not 62,000 times (*Davis* Exhibit CD-3), which, at 0.00926 mW/cm^2, places it at a level that is known to cause biological harm according to the scientific literature. Secondly, it is the huge number of RF bursts from smart meters that are significant—from 1,200 to 21,000 hits every single day—including and especially during the night, which can interfere with sleep and the ability of the body to repair and recover. Thirdly, the FCC does not impose safety STANDARDS, but, rather GUIDELINES, which do not carry the legal force of standards nor guarantee safety as true standards would.

Organizations, scientists, and physicians worldwide have written that smart meters exceed healthy radiation limits, and have repeatedly urged the FCC to reassess its guidelines. *Hendin* Exhibits 5, 7, 31, 40, X l, X2, X13, X l 7. The American Academy of Environmental Medicine pointed out that "existing FCC guidelines for RF safety that have been used to justify installation of smart meters…are obsolete… The FCC guidelines are therefore inadequate for use in establishing public health standards." *Hendin* Exhibits 6, X13. The American Academy of Pediatrics, with 67,000 members, "supports the reassessment of radiation standards for cell phones and other wireless products."

FCC guidelines are based on the National Council on Radiation Protection research, conducted prior to 1996. *Davis* Statement at 11. Thus, FCC guidelines are woefully out of date. At that time, the FCC itself expressed specific concern over its guidelines in the case of continuous exposure: "Of far greater significance, we believe, is the case of a consumer-product without any identifiable usage pattern, where continuous exposure would have to be assumed and time-averaging would not be relevant." *See, In the*

Matter of Guidelines Evaluating the Environmental Effects of Radiofrequency Radiation, FCC Docket ET-93-62 (Report and Order, Aug. 1, 1996) at 14. *Hendin* Reply Brief at 29.

Dr. Davis himself stated that FCC guidelines do not address smart meters. *Davis* Statement at 13. The FCC has conducted no studies of the effects of smart meters on health. FCC guidelines do not take into account the fact that smart meters send out frequent sharp emissions, which have a vastly different effect on the human body from other RF-emitting devices. Harm resulting from these sharp emissions has been shown in the science literature at very low RF intensities, and at least one mechanism—activation of the voltage gated calcium channels, which can lead to free radical creation and DNA breakage—has been identified. *Hendin* Reply Brief at 31.

Even the FCC conceded that it is that "further research is needed" to determine whether "effects of smart meters constitute a human health hazard." *Davis* Statement at 12, citing RF Safety Frequently Asked Questions (FAQ) website. It is noteworthy, as Ms. Hendin continues to question Dr. Davis' integrity and credibility, that he selectively quoted the FCC's statement, conveniently omitting that "further research is needed." *Id.*

K. Exception No. 11: The ALJ Erred in Not Recognizing That Met-Ed's Deployment of a Smart Meter on Ms. Hendin's Home Would Clearly Violate Section 1501 of the Public Utility Code

Several factors come together here. Ms. Hendin's medical records provide unequivocal evidence that she was adversely affected by a smart meter. The distance at which Met-Ed proposes to install a smart meter is too close and would endanger Ms. Hendin. The astronomical number of RF bursts on a daily basis would endanger Ms. Hendin's health. The FCC has not proven that smart meter radiation is safe. Therefore, the ALJ failed to recognize the totality of Met-Ed's responsibilities in PA Code, Title 66, Chapter 15, Subchapter A, Sections 1501 and 1502:

Section 1501:

> "**Every public utility** shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and **shall make all such** repairs, changes, alterations, **substitutions**, extensions, and improvements in or to such service and facilities **as shall be necessary or proper for the accommodation**, convenience, **and safety of its patrons**, employees, and the public."

Section 1502:

> "No public utility shall, as to service...subject any person...to any unreasonable prejudice or disadvantage."

Hendin Main Brief at 69-70; Reply Brief at 4, 12-13, 18.

Judge Cheskis' said, "The specific details of her symptoms are not determinative of whether Met-Ed has violated the Public Utility Code," *Hendin* Decision at 33. On the contrary, the specific details of these symptoms are definitely determinative. Installing a smart meter on Ms. Hendin's residence would constitute unsafe and unreasonable service and she should receive an accommodation. Otherwise, Met-Ed

would be in violation of the Public Utility Code, and would be subject to steep civil penalties that accrue daily for violations of the Code, such as failure to provide safe service. 66 Pa.C.S. § 3301(a)-(b). *Hendin* Decision at 33-34; Main Brief at 8.

L. Exception No. 12: The ALJ Erred in His Interpretation of Section 56.113 of the Public Code, Which Should Apply to Ms. Hendin

The ALJ correctly stated that "Section 56.113 serves to prevent termination of service for people who have a medical necessity for that service." *Hendin* Decision at 44. The ALJ then rejected Ms. Hendin's "reliance on Section 56.113 of the Commission's regulations which prohibits termination of service based on a certification by a medical professional." However, a preceding section of the Code, Section 56.111, "General Provision," clarifies Ms. Hendin's right: "A public utility may not terminate service, or refuse to restore service, to a premises when a licensed physician, physician assistant, or nurse practitioner has certified that…a member of the customer's or applicant's household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service. The customer shall obtain a letter from a licensed physician, physician assistant or nurse practitioner verifying the condition and promptly forward it to the public utility. **The determination of whether a medical condition qualifies for the purposes of this section resides entirely with the physician, nurse practitioner, or physician assistant and not with the public utility.**" (emphasis added) The ALJ incorrectly limited the application of this Code, claiming that it is "in place for consumers who, for example, need electric service to their home to operate oxygen machines that are needed to keep the consumer alive." *Hendin* Decision at 44. To clarify, the metering of the electricity is part of the service, and the service Ms. Hendin does not wish terminated is a non-smart meter; the service she wants restored is her analog meter.

56.113 specifies information to be included in a medical certificate, including "the anticipated length of the affliction." 52. Pa.Code § 56.113. The length of Ms. Hendin "affliction" is for her lifetime. Therefore, Sections 56.111 and 56.113 apply and the PUC should follow the Pa. Code.

M. Exception No. 13: Judge Cheskis Erred in His Ruling on Section 57.28 Because Substantial Record Evidence Does Exist That Shows Smart Meters Cause Danger to the Public, and Met-Ed Has Not Warned the Public of These Dangers

Section 1501 of the Code requires utilities to provide safe service and facilities. 66 Pa. C.S. § 1501. The ALJ acknowledges that "Ms. Hendin is correct that Section 57.28 of the Commission's regulations require electric utilities to properly warn and protect the public from danger." *Hendin* Decision at 34. Section 57.28 also requires electric utilities to exercise reasonable care to reduce the hazards to which customers may be subjected because of the utilities' provision of electric service and associated facilities such as smart meters. 52 Pa. Code § 57.28(a)(l). *Hendin* Main Brief at 8. Moreover, the Code requires that electric utility companies are subject to steep civil penalties that accrue daily for violations of the Code, such as failure to provide safe service. 66 Pa.C.S. § 3301(a)-(b). *Id.*

The ALJ erred when he said, "[T]here is not substantial record evidence that demonstrates that the smart meters Met-Ed seeks to install at Ms. Hendin's home in fact cause danger to the public." *Hendin* Decision at 34. There is more than ample evidence. Because the ALJ has ostensibly not read the evidence does not mean it does not exist. Therefore, if Met-Ed were to install a smart meter on Ms. Hendin's

residence, the steep civil penalties for failure to provide safe service, called for by Section 57.28, should be imposed.

N. Exception No. 14: The ALJ Erred in Neglecting to Address a Case That Ms. Hendin Cited Which Raises the Issue of Met-Ed's Mass Experimentation

A case cited earlier, *in re Cincinnati Radiation Litigation*, is relevant in another way, in that "the experiments utilized…[people] who were not informed of the consequences of their participation nor, indeed, informed of the existence…of the experiments." *See*, *Se-Ling Hosiery*, *supra*. *In re Cincinnati* states:

> To manipulate men…is to deny their human essence, to treat them as objects without wills of their own, and therefore to degrade them…. For if the essence of men is that they are autonomous beings, 'authors of values, of ends in themselves…' then nothing is worse than to treat them as if they were not autonomous but natural objects whose choices can be manipulated….' Isaiah Berlin, *Four Essays on Liberty* at 136-37 (1969).
>
> If the Constitution protects 'personal autonomy in making certain types of important decisions, (*Whalen v. Roe,* 429 U.S. 589, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977) at 589), the decision whether to participate in the Human Radiation Experiments was one that each individual Plaintiff was entitled to make freely and with full knowledge of the purpose and attendant circumstances involved….

In re Cincinnati, supra.

The FCC freely admits that it has conducted no experiments to prove the effects of radiofrequency radiation, such as that produced by smart meters, on humans. *Hendin* Main Brief at 31. Its guidelines for limits are based on other organizations' suggestions—guidelines which many eminently qualified members of the international scientific and medical communities say are woefully inadequate and outdated. *Hendin* Exhibits 5, 7, 31, 40, X1, X2, X13, X17.

Placing smart meters on homes without first proving unequivocally that they are safe is conducting a wholesale experiment on the population, without giving people complete information about the possible dangers to which they are being exposed and then allowing them the option of voluntary informed consent.

After the Nuremberg trials at the end of World War II, the Nuremberg Code was created as a set of principles for ethics in research involving human experimentation. The first principle of the Code stated, "The voluntary consent of the human subject is absolutely essential." While the Nuremberg Code is not itself law, it was the basis for the U.S. Department of Health and Human Services, Office for Human Research Protections' Code of Federal Regulations Title 45 Part 46. To clarify, Title 45, "Human Welfare," is the principle set of rules and regulations issued by federal agencies of the United States regarding public welfare. Part 46, "Protection of Human Subjects," provides regulations issued by the United States Department of Health and Human Services for the ethical treatment of human subjects. (https://www.hhs.gov/ohrp/sites/default/files/ohrp/policy/ohrpregulations.pdf)

While Title 45 Part 46 applies to research, the extrapolation to Met-Ed's actions is cogent. No regulatory agencies, such as the FCC or PUC, have conducted scientific research on the effects of smart meters on health. So placing smart meters on homes is conducting a mass experiment without the consent of individuals. This is contrary to human rights, as defined in Title 45 Part 46.

Smart meters have been put on homes throughout Pennsylvania without the utility companies or the PUC knowing exactly what the effects will be on the residents. As such, they are not following the Code of Federal Regulations Title 45 Part 46. While the ALJ sided with the utilities in refusing to acknowledge the weight of evidence showing that smart meters cause harm, he did acquiesce to there being evidence on both sides. As such, the PUC should require utility companies to inform the public of the possible danger of smart meters—much as tobacco companies were finally compelled to warn of the dangers of cigarettes—and let each household make an informed choice about whether or not to allow a smart meter on their home.

O. Exception No. 15: Judge Cheskis Erred When He Cut Short the Hearing and Thus Prevented Ms. Hendin from Carrying Out Her Burden of Proof to the Fullest Extent

The hearing for this case was scheduled for two days, December 19 and 20, 2019. Four witnesses testified on the first day of the hearing. On the second day, Dr. Israel was to be the sole witness. But that morning he said that something had unexpectedly come up and he could only stay for about an hour. "[A]n additional day of hearings was scheduled for January 24, 2020 to complete the presentation of the third witness." *Hendin* Decision at 2. However, on that day, Judge Cheskis made it clear that he did not want to devote the day, or even half a day, to the hearing. He said, "I'm not interested in going all morning to wrap up this cross-examination." Transcript at 258. A few minutes later, he reiterated, "…[W]hat I would like to do is wrap up the cross-examination of Dr. Israel, and hopefully, you know, that can happen soon." *Id.* at 260-261. A bit later, he repeated, "Like I said, I'm interested in wrapping this up soon." *Id.* at 276-277.

Right in the middle of cross-examination about the very significant 25-million-dollar, 10-year, National Toxicology Program report that found that radiofrequency radiation causes cancer (*Hendin* Main Brief at 26-27, 58; Transcript at 236-238, 273-280), Judge Cheskis said, "Dr. Israel, I'm going to interrupt you for one second. Actually, I'm going to interrupt you for good. But it is 11 o'clock now, and I think we've reached our limit on pursuing this issue on cross-examination." *Id.* at 280.

This was an arbitrary time limit. As a professional Somatic Therapist, the body and health is Ms. Hendin's professional field, and she had prepared 70 pages of cross-examination questions for Dr. Israel. The cut-off of the hearing stopped her from addressing many important issues. Such overt interference with the hearing process prevented her from her due process of evidence in order to carry out her burden of proof. Thus, the judge saying she has not satisfied her burden in proof is, in part, the fault of the judge himself since she was blocked from being able to obtain the evidence she required to fully make her arguments and present her case. Ms. Hendin did not receive a fair and impartial hearing because the ALJ did not give the hearing its fair and proper amount of time.

P. Exception No. 16: The ALJ's Assessment of Preponderance of the Evidence Is Incorrect, and Is Worsened by the Fact That It Appears the Judge Did Not Read, or Even Skim, Major Portions of the Evidence

The ALJ said, "Ms. Hendin must show, by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party, that Met-Ed is responsible or accountable for the problem described in the complaint in order to prevail." *Hendin* Decision at 26. *Patterson, Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

Ms. Hendin did exactly this in several ways. First, she presented her treating physician's medical records which demonstrated that a smart meter caused serious symptoms after exposure, and that these symptoms healed when the meter was removed. *Hendin* Main Brief at 5-6, 14, 30; Reply Brief at 20, 24. Furthermore, Ms. Hendin showed that these symptoms aligned exactly with a peer-reviewed study on the effects of smart meters on health. *Hendin* Main Brief at 5-6, 14, 30; Reply Brief at 20, 24, Exhibit X11.

Next, Ms. Hendin analyzed in great detail, and thereby refuted, every study presented by Dr. Israel that purportedly showed that RFs from smart meters have no effect on human health. *Hendin* Main Brief at 53-57.

Furthermore, Ms. Hendin presented 69 exhibits, which included thousands of studies, as well as 7 attachments to her Main Brief, while Dr. Israel presented 4 exhibits and 11 studies, and Dr. Davis presented 5 exhibits. Ms. Hendin realizes that a preponderance of the evidence does not equate with amount, but rather with substance. Even so, the substance of her evidence was absolutely more substantial than that of Dr. Israel and Dr. Davis. She showed, by a preponderance of the evidence, or evidence even more convincing, by even the smallest degree, than the evidence presented by the other party, that Met-Ed is responsible or accountable for the problem described in the complaint. Therefore, she should prevail.

The BioInitiative Report, comprising three of her exhibits, is a compendium of international studies on the effects of electromagnetic radiation on health. *Hendin* Exhibits X17, X18, X19. Because of things he said in his Decision, it appears the judge may not have looked at the BioInitiative Report in a thorough manner, if indeed he looked all. It was mailed to the ALJ as a CD. It is huge, and includes approximately 5,000 studies. Ever since its first edition, it has been lauded by thousands of scientists and physicians in many international declarations and resolutions. *Hendin* Exhibit 40.

But the judge said, "Ms. Hendin then provided extensive argument regarding the BioInitiative Report which she argued is considered a landmark ***study*** in understanding the effects of electromagnetic frequencies on health…" (emphasis added) *Hendin* Decision at 29. Similarly, the ALJ said, "[T]his Decision does not determine whether the BioInitiative Report…should be given more or less weight than any other scientific report…" *Hendin* Decision at 29.

Granted, the BioInitiative Report is unique and its extensive structure can be difficult to comprehend. But had the judge looked at the BioInitiative Report in any sort of thorough manner, he would have seen that, different from regular studies, it is not a singular study or singular scientific report. It is a ***compendium*** of nearly all the scientific, peer-reviewed research being conducted around the entire world on the effects of electromagnetic radiation on health, and is updated regularly. *Hendin* Main Brief at 22-24, Reply Brief at 31-32.

Judge Cheskis' misunderstanding of the BioInitiative Report may well stem from Dr. Israel's frequent false statements: "No, it's not a report that looks at five thousand studies." Transcript at 266. The BioInitiative Report is "a newsletter." *Id.* at 265. The BioInitiative Report is "a series of chapters written by…individual advocates of a particular viewpoint." *Id.* at 266. "[T]hese are not scientific studies." *Id.* at 265. Clearly, Dr. Israel had not even read the BioInitiative Report. Further, under cross-examination he was surprised to learn that ***the very studies he himself cited in this PUC case are actually included in the BioInitiative Report*** (*Id.* at 265-269.) This proves that the BioInitiative Report is an unbiased, all-inclusive compendium. And it shows that Dr. Israel, though he criticized it, he had not even read it.

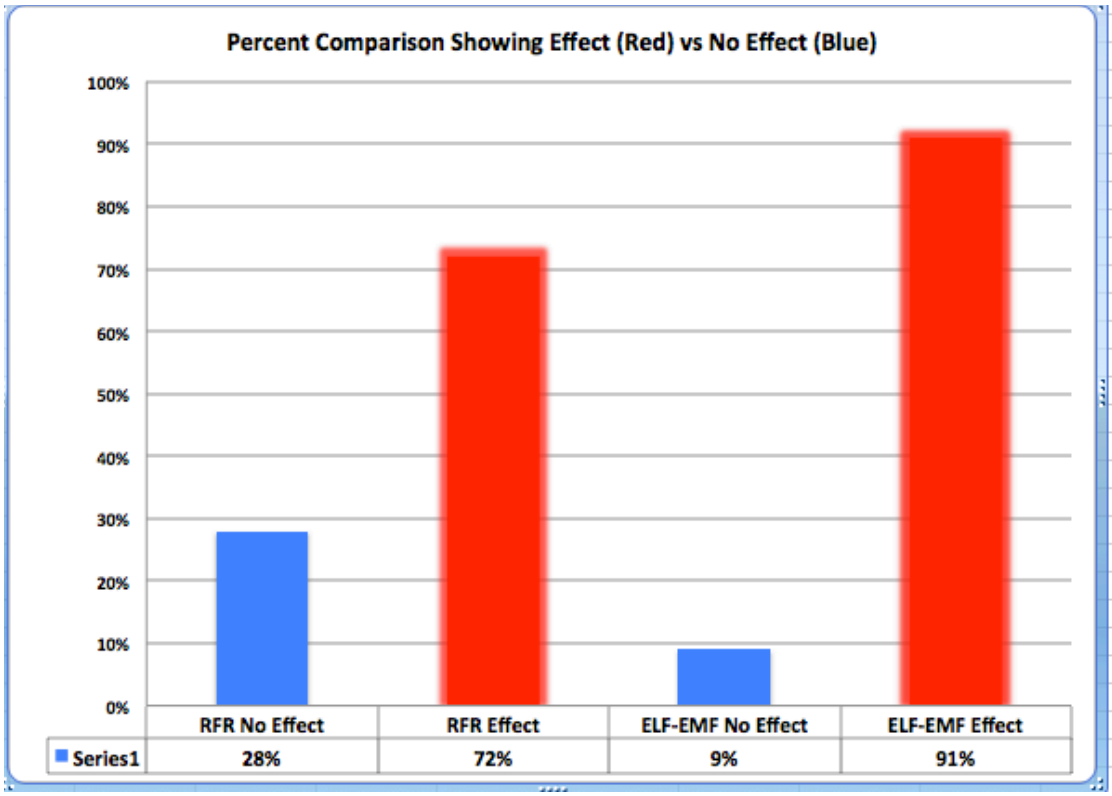
The ALJ said he "cannot determine whether the BioInitiative Report is correct." *Hendin* Decision at 30. The ALJ seems to think the BioInitiative Report presents a singular point of view. It does not. It shows studies representing both sides of the scientific aisle. Many of the studies in the Bioinitiative Report were coded as to whether they found effects **(E)** or no effects **(NE)** of radiofrequencies on health. These assessments were based on the researchers' own assessments of the results of their studies. Dr. Henry Lai, bioengineering Professor Emeritus at the University of Washington, set out to answer the question, what does the totality of current worldwide research show about the effects of EMFs on health? Dr. Lai, unlike Drs. Israel and Davis, was free of industry affiliation or bias. Here are some of the charts that visually convey his findings, **blue** representing studies that found no effects of EMFs on health, **red** representing studies that did find that EMFs affect health:

Percent Comparison Showing Effect vs No Effect in Neurological Effect Studies
BioInitiative Report Research Summaries Update,
August 2019
Chapter 8, Neurological Effects

Neurological Effects of Radiofrequency Radiation
Of 305 total studies: (E= 222 (72%); NE= 83 (28%)

Neurological Effects of Static Fields and ELF-EMF
Of 229 total studies: (E= 208 (91%); NE= 21 (9%)

(**E** = reported effect; **NE** = reported no significant effect)



Hendin Main Brief at 23-24; Exhibit 19.

Percent Comparison Showing Effect vs No Effect in Comet Assay and Free Radical (Oxidative Effects) Studies (RFR and Static Field/ELF-EMF)

BioInitiative Report Research Summaries Updates,

December 2017 and April, 2019

Chapter 6, Genotoxic Effects

RFR Comet Assay (December 2017 Update)

Of 76 total studies: (E= 49 (64%); NE= 27 (36%)

ELF EMF Comet Assay (December 2017 Update)

Of 46 total studies: (E= 34 (74%); NE= 12 (26%)

RFR - Free Radical (Oxidative Effect) April 19. 2019 Update

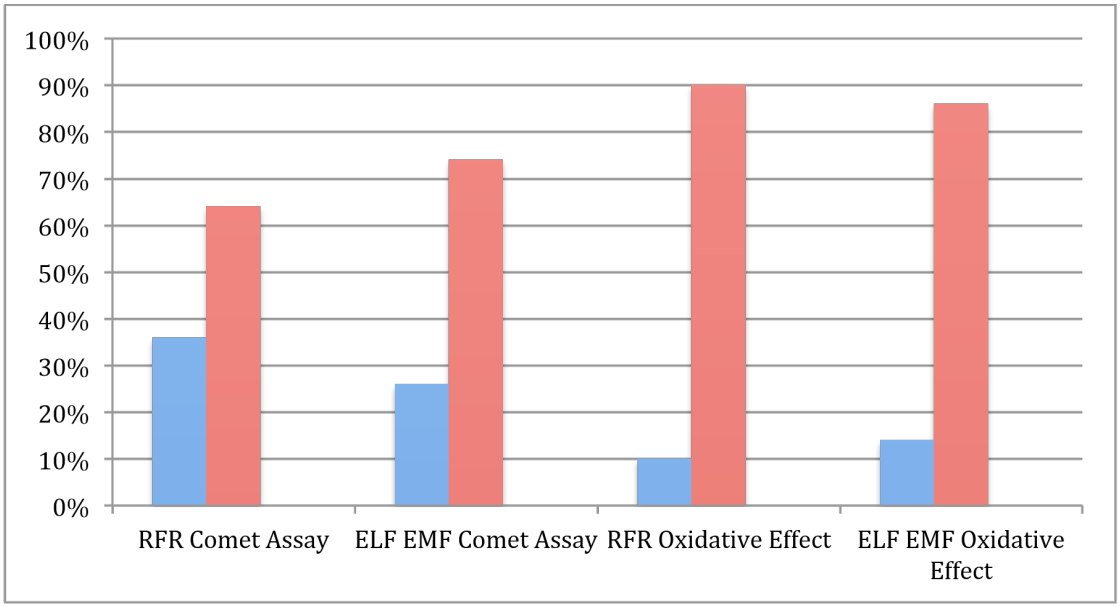
Of 225 total studies: (E=203 (90%); NE=22 (10%)

Static Field/ELF-EMF Free Radical (Oxidative Effect) April 19, 2019 Update

Of 229 total studies: **(E= 203** (89%)**; NE= 26** (**11**%)

(E = reported effect; NE = reported no significant effect)

Percent Comparison Showing Effect (Red) vs No Effect (Blue)



Id.; Exhibit 19.

To summarize, of 652 scientific, peer-reviewed studies conducted in recent years on the effects of EMFs on health, a huge preponderance of studies, represented by the red bars, showed effects. Both charts objectively show, by a preponderance of the evidence, that worldwide studies conclusively demonstrate that radiofrequency radiation adversely affects health. Thus, Met-Ed is responsible and accountable for the problem described in the complaint, and Ms. Hendin should prevail.

Scientists and doctors around the globe have been sounding the alarm about the dangers electromagnetic frequencies pose to health. Ms. Hendin compiled a 124-page appendix exhibit of 50 international Resolutions and Declarations, from 1998 to 2017, with hundreds of signatories, cautioning against the dangers of widespread exposure to EMFs, including smart meters. *Hendin* Exhibit 40, Main Brief at 7, 31-32.

In toto, Ms. Hendin presented a huge amount of information demonstrating "by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, that the evidence presented by the other party, that Met-Ed is responsible or accountable for the problem described in the complaint." *Hendin* Decision at 26. Of course, for this evidence to be weighed, it must first be read. It appears much of it was not, by either the "expert" witness or the judge himself.

Q. Exception No. 17: The ALJ Erred in Dismissing Ms. Hendin's Extensive Arguments Concerning the Language and Legislative History of Act 129 That Proved It Not a Mandate

The plain language of the statute and the legislative history make it clear that the General Assembly did not intend to prohibit opt outs. *Hendin* Main Brief at 8. Judge Cheskis is incapable of unbiased decision-making in this case. Ms. Hendin provided the relevant text of Act 129, as well as the Legislative Record pertaining to Act 129. Ms. Hendin, as a doctoral level professional, has accurately referenced the law and the PUC's misinterpretation of it. The law requires furnishing a smart meter upon request of a customer and in new installations. Legislative history shows that the PA General Assembly knew and intended that the meters would not be installed into everyone's home. *Hendin* Main Brief at 8, 34, 41-43; Reply Brief at 12, 15-17.

In evaluating Act 129, Judge Cheski said, "[T]he language of Section 2807(f) is clear and free from ambiguity." *Hendin* Decision at 34. However, he erred when he continued, "Simply because Ms. Hendin disagrees with the Commission's interpretation of Section 2807(f) does not mean that the interpretation is incorrect." *Id.* Judge Cheskis also said, "To accept Ms. Hendin's argument would mean that any statue is ambiguous or unclear solely when different entities interpret the statute differently." Contrary to the tone of the ALJ's comments, Ms. Hendin does not simply disagree. She presented ***twenty-seven (27) pages*** of argument proving that Act 129 was not intended as a mandate. *Hendin* Main Brief at 20-21, and 32-48; *Hendin* Reply Brief at 9-17; Attachments to Main Brief: House Bills 2200-PN3233, 2200-PN3218, and 2200-PN4429. Yet the ALJ circumvented these 27 pages, as if these carefully constructed arguments have no value.

The ALJ said, "… [T]he Commission…must render consistent opinions and should either follow, distinguish or overrule its own precedent. *See*, Bell Atlantic-Pennsylvania, Inc. v. Pa. 37 Pub. Util. Comm'n,

672 A.2d 352, 354 (Pa. Cmwlth. 1995). Ms. Hendin has not provided substantial evidence in this proceeding to warrant distinguishing or overruling the Commission's precedent on this issue." Given the weight of all she has presented demonstrating that Med-Ed has violated laws, she respectfully says, yes, she has provided substantial evidence to warrant overruling the Commission's precedent.

To begin with a basic point, the ALJ misinterpreted Act 129's use of the word "shall" in (f)(2). *Hendin* Decision at 28. Basic English language skills teach that if the opening sentence had read, "Electric distribution companies ***shall*** furnish smart meter technology," and had stopped there, then "shall" would mean what the ALJ said it means. But the sentence in the Act continues with two words and a colon—"as follows:" This indicates unquestionably that "shall" refers only to the three sub-points that follow—that is, smart meter technology shall be furnished in three instances: upon customer request, in new construction, and every fifteen years as the smart meters depreciate. The word "shall" does stand alone. This is basic English.

The ALJ also erred when he dismissed Ms. Hendin's analysis of the term "depreciation." He said, "…[T]he Commission's determination that customers are not allowed to opt out is not unreasonable, regardless of the Commission's reference to the 15-year depreciation schedule in Act 129." *Id* at 35. But the reference to the 15-year depreciation schedule is the exact line in the Act that was interpreted as a mandate in the Commission's Implementation Order of June 2009:

> The Commission believes that it was the intent of the General Assembly to require all covered EDCs to deploy smart meters systemwide when it included a requirement for smart meter deployment "in accordance with a depreciation schedule not to exceed 15 years.

Hendin Main Brief at 35. Equating "depreciation" with a "mandate" is patently incorrect.

The ALJ continued, "There is no need to reference the Black's Law Dictionary definition of depreciation or how that term is used by the Internal Revenue Service or in the accounting sense, as Ms. Hendin did in her brief, to support the Commission's determination as reasonable." *Id.* Judge Cheskis appeared to be saying that, regardless of how a respected law dictionary, the entire IRS, and the entire field of accounting define "depreciation," the Commission's reading of that word prevails. This is not logical or true. It is decision by fiat.

The ALJ added another element to his defense of the term "depreciation" to imply a mandate. "To the extent that Ms. Hendin disagrees with the Commission's interpretation of the word 'depreciation' in any prior order, she could have contested that interpretation in that prior proceeding. Her complaint is not the proper mechanism to do that." *Hendin* Decision at 36. He repeated this when he said, "To the extent that Ms. Hendin disagreed with the Commission's Implementation Order of 2009 that the reference to the 15-year depreciation schedule means that smart meters should be deployed to all customers, she should have raised those arguments at that time." *Id.* at 34-35. This is unreasonable and irrational. Act 129 was passed in 2008, with the ensuing Implementation Order in 2009. That was eleven years ago. Ms. Hendin had never heard of a smart meter. Practically no one in the public sector had. How was she supposed to know about, and raise questions about, this Order? With all due respect, this line of argument is unreasonable and without merit.

The ALJ erred in saying, "There is no need to look to the legislative history." *Id.* He added, "The fact that a legislator made certain comments during the legislative debate, or that there are 'numerous dissenting comments about the mandatory nature of the deployment,' or that prior versions of the bill contained certain language, as Ms. Hendin argues in her brief, does not mean that it is unreasonable for the Commission to interpret the statute as not allowing customers to opt out of receiving a smart meter." *Id.* Here the ALJ dismissed history. Ms. Hendin objects to this dismissal. The ALJ himself agreed with her when he said, "As the rules of statutory construction further require, 'when the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters: …. (7) the contemporaneous legislative history.' 1 Pa.C.S. § 1921(c)(7); *see also*, Yellow Cab Co. of Pittsburgh v. Pa. Pub. Util. Comm'n, 501 A.2d 323 (Pa. Cmwlth. 1985)." But then he reversed his stance: "In this case, however, the words of Section 2807(f) are explicit and, therefore, there is no need to consider contemporaneous legislative history, as Ms. Hendin suggests." *Id.* The judge made no cogent legal argument here. He is simply saying that the statute is explicit because he says it is. He added, "Dissenting comments or version of bills that were not enacted are not precedent." *Id.* at 35. That is correct. But they are legislative history and clearly counteract the misconstrued narrative of the PUC's Implementation Order of June 2009 regarding "the intent of the General Assembly." The ALJ may have skirted the legal history because it shows clearly that Act 129 was not intended as a mandate, and he does not want to look at it. Yet when the interpretation of a statute is in question, what better source to turn to than the people who actually wrote the statute? They themselves can inform our understanding of the statute's meaning and intent.

The ALJ said, "Act 129 was duly passed by both the Pennsylvania House of Representatives and the Pennsylvania Senate, and signed into law by the Governor, as it is codified." *Id.* But he erred when he continued, "That is the law that must be followed and there is no record evidence in this case that the Commission did not follow that law in its interpretation of Act 129 when the words of the statute are explicit." *Id.* A simple analysis of what the ALJ said reveals its shortcomings: (1) The law was passed. Yes, that is true. (2) This is the law that must be followed. Yes, agreed. (3) The Commission followed the law. No, they altered section 2807(f)(2)(iiii) such that it is not consistent with either the Plain English reading of the law, nor any legal definitions of "depreciation schedule," nor with the legislative history of the non-mandatory "intent" with which the General Assembly passed Act 129. (4) The words of the Act are explicit. Yes, true, so there is no way they can be construed as they have been misconstrued by the PUC's Implementation Order of 2009.

The ALJ lifted one sentence from Ms. Hendin's extensive argument about Act 129 and used it against her. He said, "As Ms. Hendin noted in brief [sic], nothing in Act 129 addresses opt outs or prohibits EDCs from allowing opt outs from its smart meter deployment plans. *Hendin* Main Brief at 34. Ms. Hendin therefore recognizes that nothing in Act 129 allows customers to opt out of receiving a smart meter. When a statute is silent to an issue, the relevant agency can provide its own reasonable interpretation when interpreting the statute." *Hendin* Decision at 34. Citing this one statement ignored the rest of Ms. Hendin's 27 pages of analysis. The fact that Act 129 does not explicitly offer an opt out is because it was written as an opt in:

> Section 2807(f)(2) Electric distribution companies shall furnish smart meter technology as follows:
>
> > (i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of request.

(ii) In new building construction.
(iii) In accordance with a depreciation schedule not to exceed 15 years.

No mandate equals either an opt in, as in, "Upon request of a customer," or an opt out, as in, if the electric companies are going to install smart meters, customers can choose not to have one. The judge's statement saying that the statute is silent to this issue ignored the full argument.

The ALJ himself pointed out that "The other two provisions of Section 2807(f)(2) require the deployment of smart meters upon request of the customer and in new construction." *Hendin* Decision at 29; or *Id.* In this, he acknowledged that Act 129 calls for, not for a mandate, but an ***opt in***, as is done in New Hampshire, where in 2015 New Hampshire Rev. Stat § 374:62 established an opt-in policy.

The ALJ cited the fact that opt-out bills that have been introduced into the General Assembly have not passed, and that this supports his position. This is an oversimplication because many factors can contribute to the non-passage of a bill, such as: Members of the Assembly may not understand the serious health concerns associated with smart meters, which would be exacerbated by the misrepresentation by utility companies that smart meters are safe. Lobby pressures by the utilities, and the utilities' donations to specific members, also factor into this.

The ALJ worried unnecessarily that "large swaths of Pennsylvania" might opt out. *Hendin* Decision at 29. Surveys around this country and other countries have shown that, when given the opportunity, the percentage of opt outs is not high. In fact, FirstEnergy, Met-Ed's parent company, already offers opt outs in Ohio and Maryland. MD PSC Order No. 86200. *Hendin* Main Brief at 21. As a witness for Met-Ed, Mr. Ahr's exhibit outlined the financial picture of smart meter deployment. *Ahr* Exhibit, Smart Meter Deployment Plan, Chapter 4: Financial Analysis. While he did not give the net worth of the company, this information is readily available. At the beginning of 2020, FirstEnergy's value was over $28 billion dollars. The health of citizens is at least equally as important as the wealth of the utilities.

As to the judge's concern that, in offering an opt out, "the goals and objectives of Act 129 would be undermined," (*Hendin* Decision at 29), one of the main goals was energy conservation. Surveys have shown that there has been NO reduction in energy consumption, anywhere in the world, as a result of smart meter deployment. It is commonly known in the mainstream media that people found the time-of-use program didn't fit their lifestyles; they didn't want to do their laundry at a different time of day in order to save some money. Nevertheless, Ms. Hendin attempted to find more substantial validation from Met-Ed's annual reports and other documents on the PUC's website and came up empty-handed. The Act 129 Phase III Statewide Evaluation (SWE) Team's February 19, 2020 Annual Report Act 129 Program Year 10, on the PUC's website, has no mention at all of smart meters and cites residential energy savings achieved by more energy efficient lighting and from home energy reports.

The shortcomings of smart meter technology are obvious and well-known. Compared with the electromechanical analog meters they replaced, they consume energy to run. Being made of essentially computer boards they are much more susceptible to damage from power surges (as all microelectronics are) and have a much shorter life expectancy (5-7 years, according to the October 21, 2015 Congressional Testimony of Mr. Bennett Gaines, on behalf of First Energy Service Company, of which this Commission is aware from numerous smart meter cases) than the electromechanical meters they replaced. Additionally,

data storage for all of the information generated by smart meters comes at an ever-growing energy cost. Ms. Hendin has not found any full-cost energy analysis of smart meters, but at present, they do not appear to be meeting or fulfilling the energy conservation dream of Act 129. From an energy perspective, Ms. Hendin has found no rationale for installing smart meters.

Finally, the ALJ said, "The Commission is the agency charged with implementing Act 129 and the interpretation of an administrative agency is to be given great deference, and no legal case is cited to support this." *Hendin* Decision at 34. "Given great deference"?! What is the point and purpose of a legal proceeding if the Commission is to be given great deference? While this authoritative language is quite disturbing, it may be beneficial that it is coming to the surface, in that it reveals an underlying assumption of the Commission—that, under the guise of fair and equal consideration under the law, the Commission, in fact, rules the day. The word "deference" conjures up bowing. Ms. Hendin does not bow to this Commission. Now, and throughout her life, she bows to Truth.

The Commission has previously decided that there is no opt out right under Act 129. The Commission should nonetheless read Act 129 in concordance with Section 1501 to require Met-Ed to accommodate the request of a person like the Complainant, who avoids RF exposure to the greatest extent possible based on the advice of her doctor as well as on her own initiative. The PUC should require Met-Ed to use some means other than an RF-emitting smart meter installed on her property to collect data about electric usage for billing purposes. As is done in some locations, Ms. Hendin would gladly read her own meter and send a monthly report to Met-Ed, and they could come out once or twice a year to verify this.

R. Exception No. 18: The ALJ Erred in Ignoring Decisions and Orders in 40 Other States That Allow Opt-outs from Smart Meters, and Should Recognize Them as Precedents

Ms. Hendin worked with the National Conference of State Legislatures in Washington, D.C., to compile a comprehensive list of states that offer smart meter opt outs. *Hendin* Main Brief at 20. See 52 Pa. Code *§* 5.408; *See e.g.,* 20 V. S.A. §2811 (Vermont); Attachment I. *Id.*, fn. Forty (40) states offer consumers the ability to opt out of smart meter installation, and some states offer opt out programs that vary by utility in particular locales. *Id.* Each of these 40 states that looked at smart meter harm decided to offer an opt out. Except Pennsylvania.

Almost all of these, with the exception of the New Hampshire legislature and perhaps a few others, were passed by Public Utility Commissions, who recognized the medical needs of some citizens and provided them a way to be safe. For example, the North Carolina PUC's decision provides that anyone with a physician 's letter can opt out with no fee, and other people may opt out with payment of a fee. *In the Matter of Application of Duke Energy Carolinas, LLC, for Approval of Advanced Metering Infrastructure Opt-Out Tariff,* North Carolina Utilities Commission, Docket No. 100, Sub 147, (Order) (June 22, 2018). *Id.* at 21. *See also, Order, Arizona Corporation Commission, In the Matter of Arizona Public Service Company Application for Approval of Automated Meter Opt-out Service,* Docket No. E-01345A-13-0069, Dec. 18, 2014, Decision No. 74871. *Id.*

Pennsylvania is the only state in the nation that has a universal mandate for smart meters. Pennsylvania should be embarrassed at this cruel and inhumane treatment of its citizens, and should view other state opt-out orders and legislation as precedent to offer opt outs in this state.

In fact, FirstEnergy, Met-Ed's parent company already offers opt outs in Maryland and Ohio. *Id.* at 21. *See, In the Matter of Potomac Electric Power Co. and Delmarva Power and Light Co. Request for Deployment of Advanced Meter Infrastructure*, Maryland P.S.C. Case No. 9206, Order 86200 (Fed. 26, 2014). Therefore, it would be easy for Met-Ed to put this policy into practice. As a multi-billion-dollar company, the financial outlay would be within reason. *Ahr* Exhibit 1. If Met-Ed wants community support in determining policies, Ms. Hendin, along with others, would be glad to help.

S. Exception No. 19: In the Findings of Fact the ALJ Made Errors of Preferential Representation

Fourteen of the ALJ's Findings of Fact speak about the biology and the technology of this case. In calling these "facts," Judge Cheskis committed errors of preferential representation. The 14 in question are:

1. **Findings of Fact No. 32:** "The smart meters deployed by Met-Ed comply with all safety requirements and standards established by the Federal Communication Commission (FCC) and American National Safety Institute (ANSI)." This is the main point of contention in this case, and as such should not be presented as a "fact."
1. **Findings of Fact No. 50:** "RF fields do not have the energy to break chemical bonds in DNA and therefore are non-ionizing." This is not a fact, it is an opinion claimed by Davis that is controverted in many scientific studies. To focus on this specific statement, this is an absolute falsity. See the Henry Lai charts in Exception Number 16, showing Comet Assay studies, which assess for DNA damage.
2. **Findings of Fact No. 52:** "The FCC has determined safe maximum permissible exposure limits for non-portable devices, including smart meters, which transmit RF signals." This is absolutely under contention in this case, as discussed in Exception Number 10, and is not accepted as "fact.
3. **Findings of Fact No. 53:** "There is no reliable scientific basis for a mechanism by which RF fields could cause effects in the human body other than through heating, i.e., a thermal effect, but the RF fields from the AMI meter being used by Met-Ed are too low to cause a heating effect." Recent peer-reviewed studies have proven this to be completely untrue. See Exception Number 23. Including it as a Finding of Fact is, again, an attempt to weigh the proceedings in favor of Met-Ed.
4. **Findings of Fact No. 54:** "The RF levels from the AMI meters being used by Met-Ed comply with the applicable FCC RF exposure limit." But, as stated about Finding of Fact No. 52, these FCC guidelines are faulty.
5. **Findings of Fact No. 55:** "The peak RF field from the meters used by Met-Ed is 65 times lower than the FCC's safety standards." This is same issue. It is as if the ALJ is trying to argue the case within the Findings of Fact, which is reprehensible.
6. **Findings of Fact No. 57:** "The levels of RF fields from Met-Ed Itron meters are extremely low and many times lower than the RF fields people commonly encounter from everyday sources." This is a false representation of RF levels from smart meters, based on averaging, as discussed in Exception Number 10.

7. **Findings of Fact No. 58:** "There is no reliable scientific basis in physics, biophysics, bioelectromagnetics, or radio frequency bioelectromagnetics to conclude that the very low levels of RF fields from Met-Ed's Itron meters can or will cause any adverse thermal or non-thermal biological effects in people." Again, stating this crucial point of contention as a "fact" is showing prejudice against the Complainant and in favor of the utility.
8. **Findings of Fact No. 59:** "Ms. Hendin's cell phone emits irregular frequency power in the mid-range of most currently available cell phones." This has already been argued in Ms. Hendin's main brief at 29. Note: This so-called "fact" makes no sense from a scientific perspective since frequency and power are two totally different things, so to refer to "irregular frequency power" is nonsensical.
9. **Findings of Fact No. 61:** "Smart meters are probably the weakest emitters of RF that are commonly encountered and their level of exposure are tens of thousands of time below the safe limit standards that the FCC has promulgated." This misses the major point that smart emit radiofrequency radiation bursts thousands of times a day. See Exception Number 7.
10. **Findings of Fact No. 63:** "Symptoms claimed by patients may be caused by something other than exposure to an electromagnetic frequency." This supposed "fact" favor's the utility.
11. **Findings of Fact No. 68:** "Dr. Israel's evaluation of the body of scientific research found no reliable medical basis to conclude that non-thermal RF fields cause or contribute to the development of any diseases or illnesses, including the effects alleged by Ms. Hendin."
12. **Findings of Fact No. 69:** "The symptoms of headaches, dizziness, body aches, buzzing in the ears, eye floaters, difficulty concentrating, memory loss, sleep disturbance, nausea, abdominal issues, palpitations, nervousness, fatigue, and lethargy are known as Idiopathic Environmental Intolerance (IEI) and are not caused by exposure to RF fields." This is another false "fact" and important point of contention, as Lamech and many other studies have clearly demonstrated. See Exception Number 4.
13. **Findings of Fact No. 70:** "It is not generally accepted in the medical community that IEI and the variety of symptoms attributed to IEI are caused by exposure to RF fields." This statement has no scientific validity.

This chart makes several points clear:

The 14 Findings of Fact That Show Preferential Representation

				3 SOURCES:		
Finding of Fact Number	**Witness**	**Number of Times Witness Is Cited in F of F**		**Written Statement**	**Transcript**	**Exhibit**
32.	Ahr			√		
		1				
50.	Davis			√		
52.	Davis			√		
53.	Davis			√		
54.	Davis			√		
55.	Davis			√		
57.	Davis			√		
58.	Davis			√		
59.	Davis				√	
61.	Davis				√	
		9				
63.	Israel				√	
68.	Israel			√		
69.	Israel			√		
70.	Israel			√		
		4				

The following disturbing conclusions can be drawn:

- These claims are ***not*** facts. Judge Cheskis accepted as "facts" the exact issues that are the subject of this entire legal proceeding. Calling these "facts" does not stem from an impartial evaluation of the materials in this case. It is blatantly pro-Met-Ed.
- Only claims made by Met-Ed's witnesses about these issues of biology and technology are included in the Findings of Fact. Not a single statement is cited from either Ms. Hendin or Dr. Kracht.
- Most of these "facts" are drawn from the witnesses' written statements, which were submitted ***before the hearing***. A few others are drawn from the transcript of the hearing itself. Thus, Judge Cheskis shows that he accepted the claims of Met-Ed's witnesses and completely disregarded all the arguments in Ms. Hendin's briefs and all the exhibits that she submitted.

Though the ALJ presented the credentials of all four witnesses, Drs. Israel and Davis, Dr. Kracht, and Ms. Hendin, he dismissed the treatment recommendations of Dr. Kracht, and most of the arguments of Ms. Hendin. Once again, the ALJ has shown he is incapable of unbiased decision-making in this case.

T. Exception No. 20: The ALJ Erred in Accepting Dr. Israel as a Credible Witness

Ms. Hendin appreciates that the ALJ said she "raised legitimate concerns regarding the testimony presented by Dr. Davis and Dr. Israel." *Hendin* Decision at 37. Then, predictably, as with every other ruling in this Decision, the ALJ sided with Met-Ed, saying, "[S]uch concerns do not discount their testimony and evidence they supported entirely….[and] the testimony and evidence presented by Met-Ed through Dr. Davis and Dr. Israel…outweighs the testimony and evidence presented in support of the complaint." *Id*.

The following instances show the preferential treatment the ALJ gave to Dr. Israel over Ms. Hendin:

1. Ms. Hendin showed that Dr. Israel has never conducted or published any research on the health risks of electromagnetic energy. *Hendin* Decision at 37; Main Brief at 61.Yet the ALJ said he was qualified to testify because he has experience as a medical doctor and a researcher. *Hendin* Decision at 37. This is akin to saying an experienced brain surgeon would be qualified to testify in a case about the health effects of air pollution. Dr. Israel is manifestly unqualified to testify in Ms. Hendin's case.
2. The ALJ mentioned one of the studies submitted by Dr. Israel, the Ogawa study. The ALJ focused on how long rats were exposed to radiation—11 days—and omitted Ms. Hendin's main point that this short duration of exposure is in sharp contrast to what Ms. Hendin would be subjected to if a smart meter were to be installed on her house, which therefore negates the value of this study. *Hendin* Main Brief at 54. The ALJ neglected another major point that Ms. Hendin made—namely that the Ogawa study was 10 years old, and thousands of studies questioning the safety of radiofrequency fields have been published since then. *Id.* at 53.
3. In further omissions, the ALJ ignored Ms. Hendin's criticisms that three of Dr. Israel's studies looked at how radiofrequency fields affected rat embryos, examining details like how long it took the baby rats' ear flaps to unfold. The studies did not, however, look at the effects on human tissue and organs. Of paramount importance, they did not in any way measure the type of symptoms suffered by Ms. Hendin after exposure to a smart meter, such as joint pain, insomnia, heart palpitations, dizziness, cognitive dissonance, or gastrointestinal distress. Dr. Israel extrapolated from the narrow findings of a few studies on rat reproduction to claim that EMFs from smart meters do not affect humans. This was not a valid conclusion. Clearly, this study, and all those he presented, which all suffered from similar shortcomings, are irrelevant to the current case. *Hendin* Main Brief at 53-54.
4. Concerning the eleven studies presented by Dr. Israel, and the thousands of studies presented by Ms. Hendin, the ALJ said, "A determination of the weight to be given to these studies is not necessary as part of this Decision." *Hendin* Decision at 38. The ALJ's statement disregards a tremendous amount of hugely important evidence in this case. Perhaps the judge did not want to consider this evidence because it unequivocally shows the weaknesses of Dr. Israel's studies. If one reads the objective analyses Ms. Hendin provided, which are written in plain language, it is clear that the studies proffered by Dr. Israel prove none of what Dr. Israel claims. They do not in any way prove that smart meters are safe, they attest to the lack of merit of his evidence, and they add to Dr. Israel's lack of credibility. If a determination of the weight of these studies is not necessary "as a part of this Decision," then why did both parties engage in presenting such evidence? How can a decision be rendered regarding Section 1501 of the PA Code and the safety of smart meters if the underlying scientific evidence is not only not weighted, but is essentially ignored and said to not be relevant? Thus, the ALJ erred by not including in his Decision a fair determination of the weight to be given to the scientific studies presented as evidence.

The ALJ referred to Ms. Hendin's statement "that Dr. Israel is violating his Hippocratic Oath by testifying that the smart meters are safe," and the ALJ called this an "attack." *Hendin* Decision at 44. This was not an attack, it was an appeal to Dr. Israel's integrity. As such, the ALJ is defending this witness and is not showing impartiality.

Included in the many exhibits Ms. Hendin submitted showing smart meters to be unsafe, was a 34-page appendix exhibit devoted to children, which she amassed specifically because Dr. Israel is a pediatrician. This exhibit gave: (1) **legislation** that has been enacted into law—both within this country and internationally—protecting children specifically from exposure to radiation like that emitted from smart meters; (2) **letters** written by eminent medical organizations addressing this need, such as from the American Academy of Pediatrics to the Federal Communications Commission (FCC) in 2013; (3) **position papers** on this need, such as from the Presidential Cancer Panel of the National Institutes of Health (NIH) in 2010, and the U.S. National Education Association, with 3 million members, in 2018-2019; (4) twenty-four **international resolutions**, from 2002 to 2017, signed by hundreds of physicians and scientists from around the world, calling for the need to protect children from EMFs; (5) eleven scientific, peer-reviewed **studies** clearly showing the deleterious effects on children from radiation like that emitted by smart meters; and (6) **organizations** that specifically stand up to protect children from these emissions. *Hendin* Exhibit 38. Note that only group 5 is about studies, which the ALJ said he is unequipped to evaluate. The rest of the material in this exhibit is material that the judge *can* evaluate, and he should have done so, particularly 1-4.

Further evidence of the harm that radiofrequency radiation causes children is the organization, Children's Health Defense, a team of scientists, legal experts, and volunteers led by Robert F. Kennedy, Jr. On the organization's page titled, "Known Causes [of Harm to Children]," the very first cause of harm to children's health that is listed is "Electromagnetic Fields and Wireless Technologies."

The American Academy of Pediatrics, in a letter to Congressman Dennis Kucinich dated December 12, 2012, stated,

> Children are disproportionately affected by environmental exposures, including cell phone radiation. The differences in bone density and the amount of fluid in a child's brain compared to an adult's brain could allow children to absorb greater quantities of RF energy deeper into their brains than adults. It is essential that any new standards for cell phones or other wireless devices [such as smart meters] be based on protecting the youngest and most vulnerable populations to ensure they are safeguarded through their lifetimes.

Hendin Exhibit X17 at digital 1510.

Dr. Israel claimed that RFs have no effect on health. However, studies show that children are especially susceptible to EMFs. As examples, Hocking (1996) found an association between increased childhood leukemia incidence and mortality and proximity to TV towers. Heinrich (2010) looked at 1,498 children and 1,524 adolescents, and found that exposure to RF fields was associated with overall behavioral problems for adolescents. *Hendin* Exhibit 38.

As a pediatrician, Dr. Israel should know these effects of radiofrequency radiation and should recognize the dangers, to children as well as to Ms. Hendin, who has already experienced and medically documented adverse effects from exposure to smart meter radiation. See Exception Number 4.

The ALJ chastised Ms. Hendin again: "To argue in this case that Dr. Israel's credibility has been 'questioned before' when such 'questioning' was done by a complainant in a separate proceeding also making the same argument against the installation of smart meters is disingenuous at best." *Hendin*

Decision at 39. First, quotation marks around "questioned" and "questioning" diminish the gravity of Ms. Hendin's concern. Second, "disingenuous" is defined by the Oxford Dictionary as "lacking in frankness, candor, or sincerity." So the ALJ's meaning is perplexing. Ms. Hendin is frank, candid, and sincere in objectively dismantling Dr. Israel's studies, his integrity as a pediatrician, and his overall credibility. She cited other complainants simply to show that she is not by any means the first to do so.

One of these other complainants is John Kline. *See, John Kline v. PPL Electric Utilities Corporation, Docket No. C-2017-2621072* (still before the PUC). Mr. Kline made motions to Impeach the Professional Expert Witnesses, Dr. Israel and Dr. Davis. *Kline* Reply Brief at 14; *Kline* Exceptions at 9-12. Ms. Hendin did not call directly for impeachment of these witnesses, though she would have had she known about it. PA Code Rule 607, Who May Impeach a Witness, Evidence to Impeach a Witness, explains: (a) Any party, including the party that called the witness, may attack the witness's credibility; (b) The credibility of a witness may be impeached by any evidence relevant to that issue, except as otherwise provided by statute or these rules. So, without formal impeachment, Ms. Hendin stands by her statement that both witnesses, Drs. Israel and Davis, lack credibility.

Other statements demonstrate Dr. Israel's lack of credibility. He minimized the IARC classification of radiofrequency radiation as a Group 2B carcinogen. *Israel* Statement at 14-16. And this from a man who specializes in pediatric oncology. He was completely unaware of the length and years of the BioInitiative Report, and that the studies he himself presented in this case are actually in the Report. *Hendin* Main Brief at 24; Reply Brief at 26-27; Transcript 265-268.

Dr. Israel erroneously made the overarching claim that the studies he presented, which have already been described here as outdated and irrelevant, "do not show that radio frequency fields have the capability to cause or contribute to adverse health effects in animals." *Israel* Statement at 8-9. This statement is completely erroneous. As far back as 2007, the U.S Fish and Wildlife Service, an agency of the US federal government within the US Department of the Interior, held a "Congressional Staff Briefing on the Environmental and Human Health Effects of Radiofrequency (RF) Radiation," to deal with observed radiation impacts to birds and other pollinators. *Hendin* Exhibit 24. In 2014, the U.S. Department of the Interior expressed concern for migratory birds, saying that a "significant issue associated with communication towers involves impacts from non-ionizing electromagnetic radiation emitted by them." *Hendin* Main Brief at 58; Exhibit 31. Again, contrary to Israel's claim, many scientific studies have shown effects of radiofrequency radiation on animals—which is, of course, how scientists try to learn the effects of RFs on humans. To name a few of these animal studies: Masoumi (2018) showed that rats exposed to RFs developed symptoms related to diabetes. Tang (2015) showed that EMF radiation for 28 days significantly impaired spatial memory and damaged blood brain barrier permeability in rats. Cammaerts (2011) showed that the cell membranes of protozoa were damaged. Kumar (2011) demonstrated that radiation from cell phones influenced honey bees' behavior and physiology. Panagopoulos (2010) showed that the reproductive capacity of insects was affected. Balmori (2010) showed that eggs and tadpoles near cell phone towers exhibited a high mortality rate. Magras (1997) showed irreversible infertility in mice. *Hendin* Main Brief at 59. Seventeen (17) other studies cited in Exhibit 39 showed further effects of RFs on animals.

Another glaring example of Dr. Israel's lack of credibility was his Exhibit MI-4, which quoted organizations' criticisms of the BioInitiative Report. When Ms. Hendin was looking up these excerpted

quotations to read the full document, she came across a webpage called "EMF Explained 2.0: Review of the BioInitiative Report." *Hendin* Main Brief at 51; Exhibit 41. This was such a close match to Exhibit MI-4 that it may well have been Dr. Israel's source. The quotations in Exhibit MI- 4 are exactly the same as on this webpage, with the exception of one from Germany, which Israel chose to omit. The quotations in Exhibit MI-4 are longer than those on "EMF Explained 2.0," but it is easy to insert each quotation from "EMF Explained 2.0" into Google and find the full document, then select a few additional paragraphs from the full document, which is what Israel seems to have done. So, rather than Exhibit MI-4 showing the broad reach of lsrael's knowledge of the Bioinitiative Report, Exhibit MI-4 probably took its information from an elementary webpage, which is technically hearsay. *Hendin* Exhibit 41. Dr. Israel's exhibit is also strikingly similar to the Wikipedia page on the BioInitiative Report, with many of the exact same quotes. So it appears that Dr. Israel used either of these online sources. This is hardly an indicator of professional expertise.

Dr. Israel has testified for utility companies in "tens" of cases. Transcript at 224. The credibility of his opinions must be considered in light of his industry bias toward those with vested interests in having wireless technology approved and disseminated for corporate profit.

U. Exception No. 21: The ALJ Erred in Accepting Dr. Davis as a Credible Witness

Dr. Davis said, "I have not published specific papers on the exposure from Smart Meters because Smart Meters emit such weak radiofrequency signals there's hardly been any concern about them until recently." Transcript at 184. That is completely false. There has been international concern about the dangers of radiofrequency and smart meters for many years. As mentioned in Exception Number 16, Ms. Hendin compiled a 124-page appendix exhibit of 50 international Resolutions and Declarations, from 1998 to 2017, with hundreds of signatories, cautioning against the dangers of widespread exposure to EMFs, including smart meters. *Hendin* Exhibit 40, Main Brief at 7, 31-32.

For example, the Scientific Declaration to Health Canada of 2014 called for Protection from Radiofrequency Radiation Exposure, which "includes—but is not limited to—radiofrequency radiation-emitting devices, such as cell phones and cordless phones and their base stations, Wi-Fi, broadcast antennas, ***smart meters*** and baby monitors." *Hendin* Exhibit 40 at 82. Similarly, the International Scientific Declaration of Madrid, Spain, in 2017, said, "[W]e reiterate and undertake the 2017 International EMF Scientist Appeal in its general terms and the following statements in particular:

> Numerous recent scientific publications have shown that EMF affects living organisms at levels well below most international and national guidelines. Effects include increased cancer risk, cellular stress, increase in harmful free radicals, genetic damages, structural and functional changes of the reproductive system, learning and memory deficits, neurological disorders, and negative impacts on the general well-being in humans. Damage goes well beyond the human race, as there is growing evidence of harmful effects to both plant and animal life.
>
> There is a need to take immediate action according to present scientific research; it is not in the interest of the general public to wait. The ICNIRP (International Commission on Non-Ionizing Radiation Protection) as well as the FCC/IEEE guidelines are obsolete and consequently new measures and more restrictive exposure limitations must apply…

Id. at 122. Ms. Hendin could cite 50 international resolutions and declaration that profess similarly deep concerns.

Judge Cheskis cited Dr. Davis' comparison of RF levels from a Met-Ed smart meter with RF levels from UHF TV, saying there are 16 UHF transmitters within 50 miles of the Hendin property. *Hendin* Decision at 30-31. The judge also said, "Ms. Hendin's critiques of Dr. Davis' analysis of the UHF TV towers where Ms. Hendin lives misses the point that there are electromagnetic frequencies found commonly in everyday life. UHF TV towers are just one example.…" *Hendin* Decision at 39. The comparison is full of holes and without merit. The judge completely ignored Ms. Hendin's refutation: First, the nearest tower is a full 8 miles away; others towers included in Davis' survey are as far away as Philadelphia, Wilkes-Barre, and New York City. *Hendin* Main Brief at 62-63. Yet Davis wants to compare these to a smart meter which would be 6 inches from Ms. Hendin's front door, emitting radiation bursts several thousand times a day.

Dr. Davis admitted he had never actually been to the property, and that topographic features could reduce UHF radiation. Transcript at 189. In fact, Ms. Hendin's home is on the ***south*** side of a hill, which is composed of Eastonite, a rock as hard as granite. The nearest TV tower, 8 miles away, is to the ***north***, so the rocky hill shields the home from UHF waves. In addition, the home is ***surrounded*** by tall trees, some as large as 80 feet tall and two feet in diameter. It is common knowledge that large trees shield radio waves from TV transmitters. In fact, some people grow trees on their property to provide such a shield. *Id.* Hence, this point made by Dr. Davis is insufficient and without merit.

The ALJ also sided with Dr. Davis in comparing devices he and Ms. Hendin used to measure electromagnetic frequencies. Dr. Davis' device cost thousands of dollars, while Ms. Hendin's Cornet ED88T cost a meager $150. Dr. Davis said, "[B]ecause a smart meter only emits for very short periods of time, infrequently, most of these cheap meters don't really have the capability to capture those very small emissions and accurately record what the radiofrequency levels are." Transcript at 175. This contains several points: (1) Contrary to Dr. Davis' claim, smart meters do not emit "infrequently," they emit thousands of time a day. See Exception Number 7. (2) Dr. Davis said a publicly affordable meter (let us avoid the aspersion-casting word, "cheap") cannot capture the very small emissions from a smart meter. {cite} However, Ms. Hendin's Cornet did pick up emissions—2,880 per day. *Hendin* Statement, Exhibit 3. The numbers the Cornet registered would be consistent with expected burst emissions from an Itron meter which averages 1,268 per day but could be upwards of 21,000 times a day. See Exception Number 7, *Hriadil*, *supra,* New Matter, p. 6-7 According to Dr. Davis, the Cornet would have missed some emissions, meaning that a more sensitive meter would have recorded an even higher number. So, yes, the Cornet probably missed some, which makes Ms. Hendin's case all the stronger. (3) Dr. Davis said the signals coming from a smart meter are low and weak. Ms. Hendin's Cornet recorded extremely high levels. The Cornet instrument is designed to detect and display levels of RF radiation known to be of biological harm, so it is not surprising that the RF emissions from a smart meter that Ms. Hendin observed with the Cornet were, in fact, extremely high. Dr. Davis' assessment neglects harm from non-thermal RF signals—signals which the Cornet instrument is specifically designed to detect and display. (4) Finally, Dr. Davis said the Cornet does not accurately record the RF levels. Was he saying the Cornet reads the levels too low or too high? Because of the short duration of the RF emissions from the Itron smart meters (a few hundredths of a second), one would expect that instruments like the Cornet have trouble catching and registering the full

intensity of the emission, likely catching only a fraction of it. In that case, the RF measured by the Cornet would be too low, and therefore the actual intensity of the RF bursts from the smart meter would be even higher than what Ms. Hendin was able to measure. One would need to do an experiment with Dr. Davis' device and the Cornet side by side, reading the same smart meter, to determine the difference. Thus, Dr. Davis' representation of the Cornet meter is inconclusive, and in some ways wrong. *Hendin* Main Brief at 25.

ALJ Cheskis quoted Dr. Davis as saying, "[T]he levels of radio frequency fields from smart meters, including Itron meters, are not high enough to produce tissue heating," which are called ***thermal*** effects. *Davis* Statement at 10. Here Davis slid around the science. True, the RFs are not high enough to produce tissue heating. But numerous scientific, peer-reviewed studies have proven that tissue damage can be done without heating the tissue, causing what are called ***non-thermal*** effects. Scientific literature demonstrates harm at power densities of radiofrequency radiation too low to heat tissue. At least one prominent mechanism has been identified, namely activation of the very sensitive voltage-gated calcium channels (VGCCs) found in most living things, but found in the highest density in nerve tissue in the human body. Inappropriate activation of VGCCs causes the release of calcium ions with a +2 charge that leads to a cascade of reactions that can include free radical production, DNA strand breakages, and oxidative stress, all of which set the stage for a multitude of adverse health effects, from chronic pain to cancer. *Hendin* Main Brief at 22, fn.; Reply Brief at 31; Exhibit Xl7 at digital 1285-1287.

Like Dr. Israel, Dr. Davis has testified for utility companies in "tens of cases." Transcript at 186. The credibility of his opinions must be considered in light of his industry bias toward those with vested interests in having wireless technology approved and disseminated for corporate profit.

V. Exception No. 22: The ALJ Erred When Suggesting That Ms. Hendin Take This Matter to a Different Jurisdiction

The ALJ suggested, "Ms. Hendin could consider raising her claims in a jurisdiction with the necessary expertise" (*Hendin* Decision at 44.), a "proper jurisdiction with the appropriate competencies…to determine that smart meters in fact cause health problems." *Id.*

However, the Commission has exclusive jurisdiction to adjudicate "issues involving the reasonableness, adequacy, and sufficiency" of a public utility's facilities and services. *See, Elkin v. Bell of Pa.,* 420 A.2d 371, 374 (Pa. 1980) (citations omitted). Section 701 of the Public Utility Code provides that "any person…having an interest in the subject matter…may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa.C.S. § 701. *Hendin* Main Brief at 8-9.

If the PUC were not the proper place to do this, why drag complainants through this lengthy, exhausting, and costly process? Why allow the Complainant's medical doctor to testify? Why allow Dr. Israel and Dr. Davis to testify on behalf of the utilities in approximately 40 PUC cases? This makes no sense. Furthermore, there is a precedent of the Commonwealth Court declining to hear any smart meter complaints unless the complainants first exhaust all remedies possible within the jurisdiction of the PUC. Most recently, the Haas petition (*William and Jean Haas vs. Pennsylvania Public Utilities Commission*,

Docket No. 658 MD (2019)) was objected to by the PUC for this very reason. So if one goes to the PUC, they suggest another venue and if one goes to the next possible venue (state level court), the PUC forces one back into their jurisdiction. No other recourse appears possible under the present regime.

Accordingly, Ms. Hendin, as an individual consumer, must bring her complaint before the Commission as the sole option to prevent installation of a smart meter on her home. Sending Ms. Hendin to find another "jurisdiction" is sending her on a wild goose chase to search out a non-existent tribunal. It is passing the buck and not taking responsibility for the decision that must be made by this Commission.

W. Exception No. 23: The AJL Erred When He Made Incorrect Deductions About Technology and Biology on His Own Initiative, Separate from Witness Statements

Errors were made by the ALJ in statements about technology, when he made deductions that even Met-Ed's witnesses had not stated. In this, he failed every time. The ALJ began by correctly acknowledging Ms. Hendin's attempts to minimize emitters of electromagnetic frequencies in her home. *Hendin* Decision at 31. This she does to an extraordinary degree, and does not have any wireless devices, a television (*Hendin* Main Brief at 4, Transcript at 48-50.), or even a dishwasher, washing machine, or clothes dryer, which creates an almost EMF-free home and workplace.

The judge's ensuing comparison of the stove clock to a smart meter contained several errors: (1) The stove clock emits a 60 Hz magnetic field which it typical of any device containing a motor that runs off of AC power, and which generates 60 Hz electromagnetic fields. Such fields are small and very localized and are completely different from, and not nearly as much a health concern, as the RFs emitted by smart meters. (2) The small EMFs around the clock are continuous, whereas the RFs emitted by the smart meter comes in sharp spikes that radiate into the home and invade the body. RF from smart meters is electromagnetic radiation, which means it is made up of BOTH oscillating electric AND magnetic fields, each of which has different adverse effects when it enters the body's tissues. (3) He said the stove clock was always on, whereas a smart meter emits in pulses. The issue is that the pulses of the smart meter come approximately at a rate of 1,268 on average, to upwards of 21,000 times per day, in bursts of intensity high enough to cause, according to the voluminous science literature, biological harm via "athermal" or "non-thermal (non-heating)" mechanisms. *Hendin* Main Brief at 22, 24, 58; Reply Brief at 29-31. (4) The smart meter's transmissions at night are documented to affect melatonin production (*Hendin* Exhibit X17, containing hundreds of references to the effect of EMFs on melatonin production) and interfere with sleep, which is the first symptom listed by Mr. Hendin: insomnia. Without good quality sleep, one's health is significantly compromised.

Another example of Judge Cheskis' misadventures in technology is when he said, "Nor does it take a scientific study to see that airplanes and airport terminals are a bevy of wireless usage much greater than what would be caused by a smart meter because so many people are using wi-fi at any given time in those areas." *Id.* Great, except that Ms. Hendin does not live in an airport or an airplane. She travels (or did travel, before Covid) several times a year, and testified about her reactions to wifi in these situations—getting so faint around security scanners that an airport employee saw her and brought her a chair, and a supervisor was immediately called; getting dizzy in waiting areas; and no longer being able to sleep on overnight flights in which wifi has been introduced. *Hendin* Main Brief at 28; Transcript at 44-45, 48, 71-

72, 131. A smart meter would subject Ms. Hendin to thousands of bursts of radiofrequency radiation every single day. Thus, the comparison between airports/airplanes and a smart meter is completely invalid.

Yet another example is this: "It is also likely that Ms. Hendin would have a reaction to electromagnetic frequencies emitted from wi-fi or x-ray machines in an airport because the prevalence and power of those machines are likely much greater than a single smart meter that emits pulses of electromagnetic frequencies. ***It does not require a scientific study*** to see that the x-ray machines at an airport likely emit more electromagnetic frequencies than a smart meter because they are significantly bigger." *Hendin* Decision at 31. (emphasis added) As already stated, Ms. Hendin does experience adverse reactions in airports, but the rest of the comparison between the "significantly bigger" machines in airports and smart meters falls short. The "Little Boy" atomic bomb that was dropped on Hiroshima in World War II was only 10 feet long, yet exploded with an energy of approximately 15 kilotons of TNT, causing widespread death and destruction. Size is not necessarily commensurate with effect, but ***duration of exposure*** increases likelihood of harm from wireless signals, and if a smart meter were broadcasting RF frequencies thousands of times a day in Ms. Hendin's home for the rest of her life, ***duration*** matters. It is the documented ***non-thermal*** effects that are relevant to smart meters. This is clearly insidious in comparison to airport scanners.

An important and revealing phrase is repeated, from above and here: "***Nor does it take a scientific study*** to see that airplanes and airport terminals are a bevy of wireless usage much greater than what would be caused by a smart meter because so many people are using wi-fi at any given time in those areas." *Id.* at 31. Maybe it does take a scientific study. At least it requires some basic understanding of the subject matter that is the essence of this case, which is, whether smart meters cause harm. As a complainant, reading misstatements like these makes Ms. Hendin feel that there is no way the judge can competently rule in this case.

X. Exception No. 24: Judge Cheskis Erred When He Ruled in Favor of the Utility, Even Though He Claimed He Cannot Evaluate the Science, and in So Doing, He Took Away Ms. Hendin's Ability to Carry Out Her Burden of Proof

Judge Cheskis said, "**Decisions of the Commission must be supported by substantial evidence.**" 2 Pa.C.S. § 704. (emphasis added)

Yet ALJ Cheskis said he cannot evaluate scientific studies or medical reports. This was emphasized not once, but five (5) times in his Decision, as previously noted in Exception Number 5:

1. "… [T]his Commission should not be in the position to balance the various merits and detriments of multiple scientific reports and medical documents." *Hendin* Decision at 30.
2. "… [T]his Decision does not determine whether…any other scientific report or medical document, should be given more or less weight than any other scientific report or medical document." *Id.* at 32.
3. "…[T]his Commission should not be in the position to balance the various merits and detriments of multiple scientific reports and medical documents." *Id.* at 38.
4. "A determination of the weight to be given to these studies is not necessary as part of this Decision." *Id.*

5. "This Commission cannot, and should not, attempt to weigh the merits of competing medical reports or studies." *Id.* at 43.

As said earlier, the judge is not expected to evaluate Dr. Kracht's medical reports. They stand as fact. As for the scientific studies and reports, if the judge cannot evaluate the science, he cannot just throw it out. It is a major part of this case. Why else would Met-Ed have brought two expert witnesses to testify on it, and why would Ms. Hendin, as a professional in this field, have proffered extensive analyses in her briefs, as well as hundreds of exhibits citing thousands of studies? If the judge knew he could not evaluate all this, he should have said so at the hearing. Perhaps he is saying this now because Ms. Hendin's evidence overwhelming demonstrates that smart meters are, in fact, dangerous to human health. And yet the judge wants to rule against her.

It is noteworthy that, though the judge said he cannot evaluate the science, he selected fourteen (14) Findings of Fact that were claims made by Met-Ed witnesses. See Exception Number 19. He seemed to understand the science there. Was it that he just couldn't understand Ms. Hendin's scientific evidence?

To emphasize, the judge stated, "Decisions of the Commission must be supported by substantial evidence." If the judge cannot evaluate the tremendous amount of science here, then he is dismissing the evidence, and he cannot therefore make a ruling in this case. But nevertheless, the judge proceeded to rule based on Met-Ed's claim that RFs from smart meters do not cause harmful health effects. The judge cannot disregard evidence. He cannot say he cannot rule on scientific matters, and then proceed to do so, ruling in favor of the utility.

The ALJ was inconsistent when he said, "Ms. Hendin's arguments regarding the alleged effects of the electromagnetic frequencies on her health will be rejected based on the record developed in this case." *Id.* at 32. At one moment, the ALJ says he cannot evaluate studies or medical reports. At another moment, he says he rejected her arguments based on the record developed in this case. Most of the record consists of written statements, spoken testimonies, and numerous exhibits from all five witnesses—Ms. Hendin, Dr. Kracht, Mr. Ahr, Dr. Davis, and Dr. Israel). Judge Cheskis spent considerable time lauding the credentials of Dr. Kracht, Dr. Davis and Dr. Israel. *Id.* at 39. Yet at the same time, he wants to eliminate their statements, testimonies, and exhibits. If these are thrown out, then there is no record upon which to make a ruling.

Looking at this from another perspective, the judge said, "When presented with a challenge to an AMI meter installation, the Commission has pronounced that '[t]he ALJ's role . . . will be to determine based on the record in this particular case, whether there is sufficient evidence to support a finding that the Complainant was adversely affected by the smart meter or whether [the utility's] use of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances in this case.'" *Id.* at 12, citing 66 Pa.C.S. § 1501. Again, if the judge presumes to ignore the evidence, then he cannot make a ruling in this case.

So many egregious statements have been made in this Initial Decision that the integrity of the judge is called into question. Title 28 U.S. Code § 455, Disqualification of justice, judge, or magistrate judge, addresses this: "(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in

any proceeding in which his impartiality might reasonably be questioned." Though ALJs do not take an oath of office or an oath to uphold the PA or US constitutions, they should still abide by rules of fairness and impartiality.

All this has a bearing on Ms. Hendin's burden of proof. Similar to the five repetitions of the ALJ in saying that he cannot evaluate scientific studies or medical reports, he repeatedly defined "burden of proof, giving the same definition four (4) times. "'Burden of proof' means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party." *Id.* at 11, 26, 37, and 47.

The ALJ said Ms. Hendin has the burden of proof. *Id.* at 11. In his Conclusions of Law, the ALJ said, "A person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, 'taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive.'" *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1992 Pa. PUC Lexis 160, at *210-11 (June 29, 1992) (Initial Decision). *Id.* at 48.

In fact, Ms. Hendin has met her burden of proof (with the exception of lacking additional evidence from having been denied completing her cross-examination of Dr. Israel). Through her physician's medical records (see Exception Number 4), Ms. Hendin provided unquestionable evidence of the deleterious effects of smart meter radiation on her own health. Through thousands of scientific, peer-reviewed studies, she also demonstrated the deleterious effects that occur after exposure to RF radiation, such as that emitted by smart meters. But the ALJ said he cannot evaluate the science and therefore has no basis on which to rule on the health effects of smart meters. So how can Complainant successfully carry out her burden of proof? It is a logical impossibility.

In this situation, the Commission has at least three alternatives, as follows.

One, this is a perfect time to apply the Precautionary Principle. The World Health Organization's Declaration from the Fourth Ministerial Conference on Environment and Health in 2004 referred explicitly to the Precautionary Principle with the recommendation

> "that it should be applied where the possibility of serious or irreversible damage to health or the environment has been identified and where scientific evaluation, based on available data, proves inconclusive for assessing the existence of risk and its level but is deemed to be sufficient to warrant passing from inactivity to policy alternatives."

Hendin Exhibit X17, digital at 1352.

Ms. Hendin's Main Brief cites 5 legal cases, 2 regulatory acts, and 4 law articles that all support the Precautionary Principle. Some of these are: (1) *Benner Township Water Authority v. Comm. of Pa., DEP, and Borough of Bellefonte,* 2017 EHB Docket No. 2016-042-M (Sept. 19, 2019)5 at WL 4464395 at *11 ("[T]he existence of an unacceptable risk must be assumed when there is evidence of exposure to harmful materials and there is not enough information to rule out the likelihood of harmful effect... this

precautionary principle allows a regulatory authority to act where complete scientific inquiry is unavailable if the risk of not acting may lead to serious or irreversible consequences."); (2) *Coolspring Twp. et. al. v. DER,* 1983 EHB 151, *quoting Defense Personnel Support Center v. DEP et al*., 1998 EHB 512, 531-32; (3) California's Prop 65 and the Food Quality Protection Act of 1996; (4) Registration, Evaluation, Authorization and Restriction on Chemicals, "REACH" (This European Union's landmark regulatory scheme for toxic substances espouses the Precautionary Principle, shifting the responsibility from authorities to industry, to ensure a high level of protection for human health and the environment.); (5) James M. Olson, "Shifting the Burden of Proof," 20 Envtl. Law p. 891 at 898 (1990). (The precautionary principle requires a recognition that the party attempting to alter the status quo must bear the evidentiary burden.); (6) Barton, Charmian, "The Status of the Precautionary Principle in Australia Its Emergence In Legislation and as a Common Law Doctrine" 22 Harv. Env. L.Rev. 509 at 549 (1998). (The burden of proof is traditionally placed on those attempting to alter the status quo but has been misapplied in environmental cases. As recognized in Barton, in instances where parties are seeking relief from a nuisance or an injunction, the burden of proof should be shifted from the plaintiff to the defendant.) *Hendin* Main Brief at 14-17.

The ALJ said there is no Commission precedent for the Precautionary Principle or the thin skull doctrine being adopted as part of the burden of proof. *Hendin* Decision at 24. The Precautionary Principle provides a specific burden of proof to address fairness in situations where scientific studies can be cited on both sides of a controversy. *Hendin* Main Brief at 14. The lack of Commission precedent should not preclude consideration of these eminently applicable principles. Instead, they should be applied now because they are perfectly pertinent to this case.

In discussing radiofrequency radiation, the Federal Communications Commission (FCC) writes: "It is generally agreed that further research is needed to determine the generality of such effects and their possible relevance…to human health." The very entity that Met-Ed relies on for "safety standards" (though they are guidelines, not standards) claims that further research is required to determine whether a human health hazard exists (*Hendin* Main Brief at 63-64), thereby showing again that Ms. Hendin's is an ideal case in which to apply the Precautionary Principle. Since the judge says he is not qualified to weigh the evidence, one option, instead of dismissing her complaint, is for him to take the Precautionary Principle and grant Ms. Hendin her requested relief.

A second alternative for the Commission is to decide that, under the circumstances, it would be at the very least unreasonable under Pa Code 66 Section 1501 to force the Complainant to accept RF exposure over her objection and against the recommendation of her doctor. Following either the Precautionary Principle or Section 1501, an accommodation should be granted.

Third, the PUC can bring its misconstrued Implementation Order of June 2009 into alignment with the law, Act 129 of 2008, which would thereby remove from Met-Ed and other power companies their false imperative of forcing smart meters onto the home of all Pennsylvania customers. This would relieve them and the PUC of the burden of hundreds of smart meter complaints, while allowing those who did not request a smart meter and did not agree to pay for one to not opt in, as is their right, in accordance with the law. This solution obviates the ALJs from having to make rulings in matters over which they lack sufficient understanding to properly judge.

Y. Exception No. 25: Clarification Is Needed About the Type of Meter Ms. Hendin Wants on Her Residence

On page 1 of his Decision, the ALJ stated that Ms. Hendin seeks an order "permitting her to keep her existing meter." Then on page 11, he said, "Ms. Hendin would like to continue to be served by Met-Ed through her analog meter." A small clarification is needed: Ms. Hendin's analog meter was replaced with a digital meter by Met-Ed several years ago, without her knowledge and without her permission. Fortunately, the digital meter that is currently on the house does not emit the same harmful radiation that a smart meter does, and it is read in-person by a Met-Ed employee. But Ms. Hendin does NOT want to keep her existing meter. She wants her original electromechanical analog meter that does not contain a switched-mode power supply restored. *Hendin* Main Brief at 75; Reply Brief at 3, 5.

II. CONCLUSION

For the reasons set forth above, Complainant Judith Hendin respectfully requests that the Commission grant these Exceptions and issue a Final Order that rejects the ALJ's Interim Decision of August 7, 2020, and orders Met-Ed to grant Complainant's request for an accommodation under Pa. Code 66 Section 1501 by using some means other than an RF-emitting smart meter installed on the property where she lives to collect data about electric usage for billing purposes. Specifically, an electromechanical analog meter that does not contain a switched-mode power supply.

Alternatively, Complainant requests that the Commission honor and enforce the law, Act 129 of 2008, as it was written, passed and intended by the General Assembly, and honor the fact that Ms. Hendin's situation does not come under Section 2807(f)(2)(i, ii or iii). As such, Complainant respectfully requests that the Commission orders Met-Ed to grant Complainant's request to have restored onto her home an electromechanical meter with no switched-mode power supply for metering and billing her electrical usage.

Respectfully submitted,

/s/ *Judith D. Hendin*

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Dated: August 27, 2020

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2020, I caused to be served a true and correct copy of the foregoing via email upon the following:

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