November 24, 2023

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

RE: **Docket Nos. F-2019-3008809** and **F-2019-3008832**

Secretary Chiavetta:

Enclosed for filing are the Complainants' *Reply Exceptions*, including *Exceptions to the Initial Decision of ALJ Elizabeth Barnes* and *Exceptions to the Interlocutory Order Issued on May 26, 2020 by Administrative Law Judge Elizabeth H. Barnes Granting PPL Electric Utilities Corporation's Motion In Limine And Motion For Sanctions* in the above-referenced proceeding.

Respectfully submitted,

John Holder, Janet Holder

Docket Nos. F-2019-3008809 and F-2019-3008832

CERTIFICATE OF SERVICE

We hereby certify that true and correct copies of Complainants' *Reply Exceptions*, including *Exceptions to the Initial Decision of ALJ Elizabeth Barnes* and *Exceptions to the Interlocutory Order Issued on May 26, 2020 by Administrative Law Judge Elizabeth H. Barnes Granting PPL Electric Utilities Corporation's Motion In Limine And Motion For Sanctions* have been served upon the following persons in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

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Date: November 24, 2023

John Holden Janet Holden

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

John and Janet Holder,	:	
	:	
Complainants,	:	
	:	
v.	:	**Docket No. F-2019-3008809**
	:	
PPL Electric Utilities Coporation,	:	
	:	
Respondent,	:	
	:	
June Maculesky,	:	
	:	
Complainant,	:	
	:	
v.	:	**Docket No. F-2019-3008832**
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

REPLY EXCEPTIONS

INCLUDING EXCEPTIONS OF COMPLAINANTS JOHN AND JANET HOLDER AND JUNE MACULESKY TO THE INTERLOCUTORY ORDER ISSUED ON MAY 26, 2020 BY ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES GRANTING PPL ELECTRIC UTILITIES CORPORATION'S MOTION IN LIMINE AND MOTION FOR SANCTIONS

AND

EXCEPTIONS OF COMPLAINANTS JOHN AND JANET HOLDER AND JUNE MACULESKY TO THE INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES DATED SEPTEMBER 22, 2020 AND FILED ON OCTOBER 14, 2020

Dated: November 24, 2023

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I. INTRODUCTION

Pursuant to Section 5. 533 of the Commission's regulations, 52 Pa. Code § 5.33, Complainants John and Janet Holder and June Maculesky hereby submit these Exceptions to **(1)** the Interlocutory Order Granting PPL Electric Utilities Corporation's Motion in Limine and Motion for Sanctions, issued on May 26, 2020, and **(2)** the Initial Decision of Administrative Law Judge Elizabeth H. Barnes, dated September 22, 2020 and filed on October 14, 2020.

(1) A. INTERLOCUTORY ORDER GRANTING SANCTIONS

In their **Answer in Opposition to Motion for Sanctions** (https://www.puc.pa.gov/pcdocs/1660744.pdf), and in their **Motion to Remove Sanctions** (https://www.puc.pa.gov/pcdocs/1674878.pdf), their **Reply to Respondent's Answer in Opposition to Motion** (https://www.puc.pa.gov/pcdocs/1677941.pdf**),** and their **Amended Motion to Remove Sanctions** (https://www.puc.pa.gov/pcdocs/1678681.pdf), the Complainants have shown clearly and conclusively that Respondent PPL Electric's argument in support of its Motion for Sanctions was logically incoherent and unsound on its face and, based entirely upon specious reasoning, was therefore completely without merit. The Complainants' medical records absolutely were NOT, any more than were their drivers' licenses, materially relevant to their Complaint, and ALJ Barnes, by accepting the Respondent's fallacious argument, erred in failing to recognize or acknowledge that fundamental fact.

By illogically concluding, in her interlocutory Order, that merely because the Complainants had not provided copies of their medical records in response to PPL Electric Utilities' Interrogatories to Complainants Set I, No. 4, the Complainants "will not experience any medical conditions or issues from the installation of PPL Electric's AMI meter," ALJ Barnes thus erred in granting PPL Electric's Motion for Sanctions. (See Order Granting PPL Electric Utilities Corporation's Motion in Limine and Motion for Sanctions, https://www.puc.pa.gov/pcdocs/1664299.docx , Page 2, Order No. 4.)

Even though we, the Complainants, have not provided our medical records, we have every right under due process, and through means of argumentation and cross-examination, to challenge fully the safety and/or unreasonableness of PPL Electric's AMI meters pursuant to 66 Pa. C.S. § 1501.

However, the sanctions that unjustly and unjustifiably have been imposed by ALJ Barnes upon the Complainants have profoundly adversely affected the Complainants' ability to litigate their case in all subsequent proceedings, including the evidentiary hearing held on August 6, 2020. Because of the sanctions, the Complainants specifically were precluded from cross-examining the Respondent's expert witnesses and from asserting any claim or entering any evidence into the record that would support allegations of unreasonableness of the installation of PPL Electric's smart meters insofar as such were to concern issues of health and safety.

The Complainants consequently have been unjustly deprived of fully exercising their rights under due process, with the result that the Complainants' case has suffered severe prejudice and has been obstructed and encumbered with an utterly incomplete record, as reflected in the Initial Decision of ALJ Barnes.

Additionally, the Commonwealth Court has concluded that Act 129 does not preclude accommodations of customers' health concerns, **regardless of proof of harm**. (*Povacz et al. v. Pennsylvania Public Utility Commission*, No. 492, C.D. 2019.) As will be further explained in this document, because both the Respondent's Interrogatories request for the production of Complainants' medical records and the ALJ's Order granting PPL Electric's Motion for Sanctions were erroneously predicated on requiring the Complainants to produce their medical records in order to pursue their due process right to challenge the safety and/or reasonableness the installation of PPL Electric's AMI smart meters, it is appropriate and lawful that the ALJ's Interlocutory Order granting sanctions be reversed and the sanctions be removed.

(1) B. INTERLOCUTORY ORDER GRANTING MOTION IN LIMINE

In both their **Amended Complaint** (https://www.puc.pa.gov/pcdocs/1636175.pdf) and their **Motion in Opposition to PPL Electric's Motion in Limine** (https://www.puc.pa.gov/pcdocs/1660960.pdf), the Complainants brought forth a voluminous amount of highly relevant, highly credible and reliable evidence of definite probative value which would constitute a preponderance of evidence acceptable to any reasonable mind that forced, chronic, long-term exposure, even at very low levels, to the radiofrequency radiation and RF fields produced by PPL Electric's AMI wireless smart meters poses a non-negligible, substantive risk to health and safety, and it is therefore absolutely NOT reasonable for either PPL Electric or the Commission effectively to compel customers to endure such exposure in perpetuity as a condition of receiving electric service.

A substantial number of the evidentiary exhibits brought forth by the Complainants in both their **Amended Complaint** and **Motion in Opposition to PPL Electric's Motion in Limine** were, in accordance with 52 Pa. Code § 5.406(a)(1) and/or §5.406 (a)(2), **public documents**.

In her interlocutory Order granting PPL Electric's Motion in Limine, issued in indiscriminate, blanket fashion, and with no reason given, the ALJ erred in denying any and all of the Complainants' exhibits that fully satisfied either or both of the criteria set forth in §§ 5.406(a)(1) and 5.406(a)(2).

(2) INITIAL DECISION

On page 3 of her May 26, 2020 Order Granting PPL Electric's Motion in Limine and Motion for Sanctions, ALJ Barnes stated:

> "Because Complainants failed to produce any information and documents responsive to PPL to Complainant Set I, No. 4 during the course of this proceeding, and they indicated that they did not intend to do so, I found that Complainants have not and will not experience any medical conditions or issues from the installation of PPL Electric's AMI meter as a sanction. Therefore, Complainants' health allegations will not be addressed in the body of this decision."

As previously indicated under (1)A, Interlocutory Order Granting Sanctions, supra, ALJ Barnes erred in accepting PPL Electric's logically incoherent and unsound reasoning concerning the production of Complainants' medical records as grounds for imposing sanctions upon the Complainants. Further, the sanctions imposed by ALJ Barnes severely prejudiced the Complainants' case, precluded the Complainants from presenting highly relevant, highly credible and reliable evidence of definite probative value, and thereby deprived them of their due process rights to fully and properly challenge, pursuant to 66 Pa. C.S. § 1501, the safety and reasonableness of PPL Electric's AMI smart meters.

On page 11 of the ALJ's Initial Decision, ALJ Barnes states: "The instant case is more similar than distinguishable from prior decisions wherein the Commission has dismissed similar complaints." On the contrary, the Complainants argue that there is much to distinguish the instant case from the other smart meter cases alluded to by ALJ Barnes.

Both ALJ Barnes and PPL Electric Utilities have taken the position that the decidability of the issue of whether or not the Company's smart meters are in proper accordance with 66 Pa. C.S. § 1501 with regard to reasonableness and safety is predicated upon their contention that scientific safety studies are at present "inconclusive."

The Complainants have shown copiously and conclusively by having brought forth **public documents**, findings of multiple peer-reviewed scientific studies, and even a definitive medical handbook on the biological effects of electromagnetic fields, all demonstrating that:

> (1) It is incontrovertibly the case that the FCC safety guidelines for RF exposure do NOT account for all possible mechanisms of interaction of RF with biological structures and systems, and
>
> (2) The science is settled **beyond reasonable doubt** that such interactions in fact can and do occur which do NOT involve thermal mechanisms or acute exposure to RF.

By continuing the pattern followed in other smart meter cases, of misplacing the burden upon the Complainants such that they are required to conclusively prove harm by producing a preponderance of evidence that wireless smart meters are unsafe, the ALJ has failed to consider the FACT that at present, **there absolutely DOES NOT EXIST an established guideline or standard of safety** that would protect against any of the non-thermal mechanisms of interaction for RF **that are known to exist**. (See **Attachment III**.) This fact, among others, directly speaks, pursuant to 66 Pa. C.S. § 1501, to the utter unreasonableness of forcing the Complainants to endure chronic, long-term exposure to the RF radiation and fields produced by PPL Electric's AMI meters as a condition of their continuing to receive electric service.

The Initial Decision by the ALJ focused almost entirely on the standard dogmas concerning smart meter safety with regard to RF exposure and gave only the most perfunctory of considerations to the Complainants' allegations concerning fire safety and privacy.

In her Initial Decision, ALJ Barnes also completely failed to consider two (2) of the four main causes of action brought forth in depth in the Complainants' **Amended Complaint**, namely those having to do almost entirely with matters of law regarding PPL Electric's actions pursuant to the Commission's policy which:

> (1) mandated universal installation of smart meters based upon the Commission's misconstruction of the General Assembly's legislative intent as expressed in the language of Act 129—specifically codified under 66 Pa.C.S. § 2807(f)(1), § 2807(f)(2), **and** § 2807(f)(7), and
>
> (2) by mandating universal installation of smart meters, would **force** the Complainants' properties to be **used** by PPL Electric for purposes **other than** the collection of the Complainants' electricity usage data. That is, the Commission's policy would allow PPL Electric Utilities to forcibly use its AMI wireless smart meters on the Complainants' homes as "relay points to transmit data" **that does not originate from the Complainants' properties**.

The latter assertions expressed by allegation (2), immediately supra, involve far more than an ordinary property dispute between PPL Electric Utilities and the Complainants. Here, by enforcing its policy of universally mandating smart meters, the Pennsylvania Public Utility Commission, most definitely a state actor, **has insinuated itself directly into**, and **has become participatory in**, the violation of the Complainants' property rights protected under the Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States.

II. LEGAL STANDARDS

A. THE CONSTITUTION OF THE UNITED STATES, THE FOURTH, FIFTH, EIGHTH, NINTH, AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

Article VI, Clause 3 of the United States Constitution states:

> *This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*

The Supremacy Clause of Article VI of the U.S. Constitution mandates that states must provide hospitable forums for federal claims and the vindication of federal rights (*Felder v. Casey,* 487 U.S. 131, 108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988)).

The Supremacy Clause establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions.

In Edgar v. MITE Corp., 457 U.S. 624 (1982), the Supreme Court ruled: "**A state statute is void to the extent that it actually conflicts with a valid Federal statute**".

The Fourth Amendment to the United States Constitution guarantees that:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated ... ."

The Fifth Amendment provides that:

> "No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Eighth Amendment provides that:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Ninth Amendment to the Constitution of the United States provides that:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The Fourteenth Amendment provides in part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

B. **50 U.S.C. 36, Subchapter I, §§ 1801(f), 1809(a), 1810, and 1812**

> **Section 1801. "ELECTRONIC SURVEILLANCE" Definition**—
> ...
> (3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States;
>
> (4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

Section 1809. Criminal Sanctions

(a) Prohibited activities A person is guilty of an offense if he intentionally—

(1) engages in electronic surveillance under color of law except as authorized by this chapter, chapter 119, 121, or 206 of title 18, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 1812 of this title;

(2) discloses or uses information obtained under color of law by electronic surveillance, knowing or having reason to know that the information was obtained through electronic surveillance not authorized by this chapter, chapter 119, 121, or 206 of title 18, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 1812 of this title.

Section 1810. Civil Liability

An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 1801(a) or (b)(1)(A) of this title, respectively, who has been subjected to an electronic surveillance or about whom information obtained by electronic surveillance of such person has been disclosed or used in violation of section 1809 of this title shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(a) actual damages, but not less than liquidated damages of $1,000 or $100 per day for each day of violation, whichever is greater;

(b) punitive damages; and

(c) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

Section 1812. Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted

(a) Except as provided in subsection (b), the procedures of chapters 119, 121, and 206 of title 18 and this chapter shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted.

(b) Only an express statutory authorization for electronic surveillance or the interception of domestic wire, oral, or electronic communications, other than as an amendment to this chapter or chapters 119, 121, or 206 of title 18 shall constitute an additional exclusive means for the purpose of subsection (a).

C. EVIDENTIARY STANDARDS AND CRITERIA

Evidence is relevant if it tends to establish facts in issue. *LeRoi v. Pa. State Civil Service Commission,* 382 A.2d 1260 (Pa. Cmwlth. 1978).

"Commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and **all relevant evidence of reasonably probative value may be received**." 2 Pa. C.S. § 505.

The Pennsylvania Public Utility Commission, a Commonwealth agency, is not bound by technical rules of evidence at agency hearings and therefore may receive all relevant evidence of reasonably probative value.
If the evidence is relevant to the issues before the agency and of reasonable probative value, the agency may receive it. 2 Pa. C.S. § 505.

Hearsay evidence may generally be received and considered during an administrative proceeding. *See A.Y. v. Commonwealth, Dep't of Pub. Welfare, Allegheny County Children & Youth Serv.,* 537 Pa. 116, 641 A.2d 1148, 1150 (1994).

Under the relaxed evidentiary standards applicable to administrative proceedings, as provided under 2 Pa. C.S. § 505, it is well-settled that simple hearsay evidence, which otherwise would be inadmissible at a trial, **generally may be received into evidence and considered during an administrative proceeding.** *D'Alessandro v. Pennsylvania State Police*, 937 A.2d 404, 411, 594 Pa. 500, 512 (2007).

Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 n.9 (Pa. Cmwlth. 2008)

Substantial evidence must be "more than a scintilla and must do more than create a suspicion of the existence of the fact to be established." *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008).
In order for evidence relied upon in an administrative proceeding to be considered "substantial evidence," the ". . . information admitted into evidence must have sufficient indicia of reliability . . . " *Gibson v. W.C.A.B,* 861 A.2d 938, 944, 580 Pa. 470, 480 (Pa. 2004).

To satisfy the requirement of authenticating or identifying an item of evidence ... "the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Pa. R.E., Rule 901.

Evidence which is corroborated by any competent evidence in the record must be given its "natural probative" effect.

The Complainants have brought forth a voluminous amount of highly relevant, highly credible and reliable evidence of definite probative value that certainly meets the above criteria and which would constitute a preponderance of evidence, acceptable to any reasonable mind, that forced, chronic, long-term exposure, even at very low levels, to the radiofrequency radiation and RF fields produced by PPL Electric's AMI wireless smart meters poses a substantive risk to health and safety.

Although the Complainants admittedly are not experts in the fields of medicine or radiation biophysics, they are sufficiently educated and have expertise enough to understand the public documents and the conclusions published in peer-reviewed scientific studies that are written in plain English such that any reasonably well-educated school student could understand.

However, despite the evidentiary standards and criteria listed supra, in the course of the proceedings of the instant case, ALJ Barnes utterly failed to apply careful judicial scrutiny to the Complainants' evidentiary exhibits in light of those standards and criteria and despite the fact that much of the evidence was published in **public documents**. Nonetheless, virtually all of the Complainants' evidentiary exhibits concerning RF safety were denied admission into the record.

III. EXCEPTIONS

EXCEPTION NO. 1: The ALJ erred in failing to consider the FACT that the Commission's policy mandating universal installation of smart meters, would force the Complainants' properties to be used by PPL Electric for purposes other than the collection of the Complainants' electricity usage data. That is, the Commission's policy would allow PPL Electric Utilities to forcibly use its AMI wireless smart meters on the Complainants' homes as "relay points to transmit data" that does not originate from the Complainants' properties.

On page 1 of 'PPL Electric AMI Customer Privacy Policy', PPL Electric Exhibit KD-4 in the instant case, it states:

> **"This AMI Data is collected via (and transported on) the AMI network, which is the data communinications path from the meter to the head-end application."**

On page 6 of 'Direct Testimony of Mike Asbury', PPL Electric Statement No. 4 (dated February 28, 2020) in the instant case, Mr. Asbury testified that:

> **"The individual RF mesh meters are used as relay points to transmit data back to PPL Electric utilizing a 900 megahertz ('MHz') frequency."**

In other words, PPL Electric is using customers' homes and properties for purposes other than the collection of the customers' electricity usage data. That is, the Commission's policy would permit PPL Electric Utilities to forcibly use its AMI wireless smart meters on the customers' homes as "relay points to transmit data" that does not originate from the customers' properties.

PPL ELECTRIC'S VIOLATION OF PROPERTY RIGHTS PURSUANT TO THE COMMISSION'S POLICY-MANDATED INSTALLATION OF SMART METER DEVICES

ASSERTIONS of FACT and MATTERS of LAW:

1. Private property rights are a fundamental and preeminent part of citizens' rights protected under the state and federal constitutions.

2. Neither 52 Pa.C.S. §56.81(3), nor 66 Pa.C.S. § 1406(a)(4), nor does Act 129 or any other statute, regulation or policy relevant to the matter brought forth in this Complaint preempt, supervene, supersede or take precedence over citizens' private property rights.

3. There is no law, statute, official rule, regulation, or right of easement which permits, or would permit, PPL Electric Utilities to install any device other than a meter, only a meter, and nothing but a meter on the Complainants' homes or properties without their consent.

4. In their original intent and as written, 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) apply to **meters**, **only to meters**, and **to nothing but meters**.

5. In the instant case, 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) apply to meters, only to meters, and to nothing but meters—devices with the functional capability of doing nothing more or other than to measure electric power usage such that electric utility companies are able to bill according to the actual amount of electricity used.

6. Given the capability specified in ¶ 5, supra, no other functionality of an electric power meter is necessary in order for an electric utility company to receive full and proper remuneration for its services.

7. Given the capability specified in ¶ 5, supra, no other functionality of an electric power meter is necessary in order for PPL Electric Utilities to enjoy fully the original single purpose for which it was granted an easement.

8. 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) do ***not*** apply to commercial-use, radiofrequency broadcasting antennas and transmitters.

9. 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) do ***not*** apply to data communications devices used as "relay points to transmit data" that does not originate from the customers' homes or properties.

10. 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) do ***not*** apply to computers.

11. 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) do ***not*** apply to devices such as 'switched mode power supplies' (SMPS) which produce high-frequency voltage transients of conducted emissions and/or which introduce, add to, or propagate such emissions through the electrical wiring of homes and buildings.

12. 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) do ***not*** apply to devices which produce and/or augment emanation of electromagnetic fields (EMFs) from the electrical wiring of homes and buildings.

13. There is no law, statute, official rule, regulation, or right of easement which permits, or would permit, PPL Electric Utilities to install powerful, FCC-regulated, RF-radiating, radio- transmission antennas on the Complainants' homes or properties without their consent.

14. There is no law, statute, official rule, regulation, or right of easement which permits, or would permit, PPL Electric Utilities to install FCC-regulated computer and data communications devices on the Complainants' homes or properties without their consent.

15. PPL Electric Utilities has never been authorized or given permission or the right, either by easement or by siting license or permit, to install or operate powerful, FCC-regulated, RF radiation-emitting, radio-transmission and data communications devices on the Complainants' homes or properties.

16. "A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." ... "See United States v. Place, 462 U.S. 696 (1983); id., at 716 (BRENNAN, J., concurring in result); Texas v. Brown, 460 U.S. 730, 747 -748 (1983) (STEVENS, J., concurring in judgment); see also United States v. Chadwick, 433 U.S. 1, 13 -14, n. 8 (1977); Hale v. Henkel, 201 U.S. 43, 76 (1906). ... [T]his definition follows from our oft-repeated definition of the 'seizure' of a person within the meaning of the Fourth Amendment - meaningful interference, however brief " (*United States v. Jacobsen* 466 U.S. 109, 113.)

In *Lugar v. Edmondson Oil*, 457 U.S. 922, 942 (1982), the Court stated:

> "[W]e have consistently held that a private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a 'state actor' for purposes of the Fourteenth Amendment. The rule in these cases is the same as that articulated in *Adickes v. S. H. Kress & Co.*, supra, at 152, in the context of an equal protection deprivation:
>
> > "'Private persons, jointly engaged with state officials in the prohibited action, are acting "under color" of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents,'" quoting *United States v. Price*, 383 U.S., at 794." (See '**State Action Doctrine**' **(Attachment I)** at the end of this document.)

The operation of an FCC-regulated, RF radiation-emitting, radio-transmission device that is owned by a party other than the owner of the home to which the device is attached is, ipso facto, a ***use*** by the operating party in the property of the homeowner. The operation of an FCC-regulated, data communications/data relay device that is owned by a party other than the owner of the home to which the device is attached is, ipso facto, ***a use*** by the operating party in the property of the homeowner.

17. There is no law, statute, official rule, regulation, or right of easement which permits, or would permit, PPL Electric Utilities to use the Complainants' homes as sites for the company's AMI smart meters to function partly as "relay points to transmit data" that does not originate from the Complainants' homes or properties.

18. **The Commission's policy of mandating the installation of smart meters would force the Complainants' properties to be used by PPL Electric Utilities for purposes other than the collection of the Complainants' electricity usage data. That is, the Commission's policy would allow the electric utility to forcibly use its AMI wireless smart meters on the Complainants' homes as "relay points to transmit data" that does not originate from the Complainants' properties.** PPL Electric Utilities, **acting with the imprimatur either of the Commission or of the State itself**, thus would be given usage of the Complainants' properties without such usage having been granted either by the existing easement or by the Complainants' informed consent. The Commission's policy pursuant to Act 129 therefore violates the Complainants' property rights protected under the Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States.

19. PPL Electric Utilities does **not** have the statutory authority or right to site powerful, radiofrequency radiation-producing, RF-transmitting, data communications devices on the Complainants' properties and to thereby **physically affect or cause physical alteration** to the ***interior*** environments of the Complainants' homes by means of the production of RF electromagnetic fields, and/or conducted emissions ('high-frequency voltage transients') and/or frequent transmissions of modulated radiofrequency radiation which would add to the already-existing RF radiation burden from other outside sources including area cell phone towers, other smart meters and facilities in the utility company's AMI mesh network, etc.

20. Without customer consent, PPL Electric Utilities does ***not*** have the statutory authority or right, pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), to **use** customers' homes in such a way as to irradiate them in perpetuity ***from their own premises*** with what has been found conclusively, on the basis of strong and clear scientific evidence, to **at least** ***a Group 2B possible human carcinogen***.

21. Without customer consent, PPL Electric Utilities does ***not*** have the statutory authority or right, pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), to **use** customers' homes, and **by and through such direct use of customers' own premises**, physically alter customers' living environments in any way which possibly could **increase** customers' **risk** of sustaining biological or adverse health effects.

22. Without customer consent, PPL Electric Utilities does ***not*** have the statutory authority or right, pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), to **use** customers' homes and from the customers' own premises, irradiate them in perpetuity ***as a condition of their continuing to have access to electric service***.

23. Without customer consent, PPL Electric Utilities, acting pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), has no statutory authority or right, by company use of customers' homes or properties, to increase customers' risk—***no matter how small***—of biological or adverse health effects as a condition of their having access to electric service.

24. Without customer consent, the Pennsylvania Public Utility Commission, acting pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), has no statutory authority or right, through state-regulated electricity providers' use of customers' homes or properties, to increase customers' risk— no matter how small—of biological or adverse health effects as a condition of customers having access to electric service.

25. Without customer consent, the State of Pennsylvania, acting pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), has no statutory authority or right, through state-regulated electricity providers' use of customers' homes or properties, to increase customers' risk—no matter how small—of biological or adverse health effects as a condition of their having access to electric service.

26. The Pennsylvania Public Utility Commission has jurisdiction over the state's public electric utilities.

27. The Pennsylvania Public Utility Commission does not have statutory authority or jurisdiction over the public's inherent right to deny consent.

28. The PA PUC has authority to mandate that the state's electric utility companies ***offer*** AMI wireless smart meters for use by the public, but the Commission cannot, especially given the absence of explicit, clear and definitive direction set forth by the Pennsylvania Legislature, mandate or require that the utilities install smart meters on the private properties of persons who do not want or do not consent to them.

29. Act 129 does not compel citizens or the public to submit or give consent to the installation of AMI wireless smart meter devices on their homes or properties.

30. Act 129 does not confer authority upon the electric utility companies to compel persons to submit or give consent to the installation of AMI wireless smart meter devices on their homes or properties.

31. Act 129 does not compel the state's electric utility companies to act so as to compel persons to submit or give consent to the installation of AMI wireless smart meter devices on their homes or properties.

32. Act 129 does not compel the state's electric utility companies to terminate electric service to customers who do not give consent to the installation of AMI wireless smart meter devices on their homes or properties.

33. 52 Pa.C.S. §56.81(3), and/or 66 Pa.C.S. § 1406(a)(4), separately or in combination, do ***not*** compel any state-regulated electric utility company to terminate customers' electric service. These regulations simply authorize such companies to do so in accordance with certain provisions.

34. 52 Pa.C.S. §56.81(3), and/or 66 Pa.C.S. § 1406(a)(4), separately or in combination, do ***not*** compel citizens or the public to submit or give consent to the installation of AMI wireless smart meter devices on their homes or properties.

35. 52 Pa.C.S. §56.81(3), and/or 66 Pa.C.S. § 1406(a)(4), and/or Act 129, separately or in combination, do ***not*** confer statutory authority upon the Pennsylvania Public Utility Commission or any state-regulated electric utility company to compel persons to submit or give consent to the installation of AMI wireless smart meter devices on their homes or properties.

36. 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4) and/or Act 129, separately or in combination, do ***not*** compel any state-regulated electric utility company to act so as to compel persons to submit or give consent to the installation of AMI wireless smart meter devices on their homes or properties.

37. 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4) and/or Act 129, separately or in combination, do ***not*** compel any state-regulated electric utility company to terminate electric service to customers who do not give consent to the installation of AMI wireless smart meter devices on their homes or properties.

38. Neither the Pennsylvania Public Utility Commission nor the state's electric utility companies have, on the basis of a complete, objective, unbiased, non-selective accounting of the available scientific evidence, ever properly established the safety specifically of AMI wireless smart meter devices and technology with regard to their production of modulated radiofrequency radiation, RF electromagnetic fields, and conducted emissions of high-frequency voltage transients.

39. The Pennsylvania Public Utility Commission has never required or obtained, in accordance with **66 Pa.C.S. §315 (c),** definitive proof, by means of the production of independent, unbiased, entirely non-selective and conclusive scientific evidence, that the modulated RF radiation, RF electromagnetic fields and/or conducted emissions produced specifically by the operation of AMI wireless smart meters and smart meter network technologies do not, could not, cannot and will not cause biological or adverse health effects.

40. "Utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety." (*Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1.)

"Electrical service, being a necessity of life ..., is an entitlement which under our decisions may not be taken without the requirements of procedural due process. Fuentes v. Shevin, 407 U.S. 67, 80 (1972); Goldberg v. Kelly, 397 U.S. 254 (1970); Palmer v. Columbia Gas of Ohio, Inc., 479 F.2d 153 (CA6 1973)."

41. Under 52 Pa.C.S. § 56.81(3) and 66 Pa.C.S. § 1406(a)(4), a termination of service is authorized for a customer's "[f]ailure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading."

42. PPL Electric Utilities, pursuant to the Commission's policy-mandated, smart meter implementation orders, has threatened to terminate Complainants' access to electricity, sending a notice-of-termination letter with the "Reason for Termination" given as "Non-Access to Meter."

43. The Complainants have ***never*** denied PPL Electric Utilities access to the company's meter for any purpose **that is properly *proven* to be *safe*** and which would not be in violation of the Complainants' fundamental rights. This includes access for the purpose of replacement of the meter. The Complainants' simply have denied the company permission to install a device which is far more than merely a meter and for which **there is no reliable medical or scientific evidence upon which to conclude that chronic, long-term exposure to the radiofrequency radiation and RF fields produced as a result of the installation of such metering devices could not, cannot, would not and will not cause, exacerbate or contribute to biological or adverse health effects.**

44. It is not constitutionally permissible for PPL Electric Utilities to terminate or withhold electric service or to in any way penalize the Complainants solely on the basis of the Complainants not giving consent to the company's installation of AMI wireless smart meter devices on the Complainants' homes or properties.

ARGUMENTS:

An electric meter is simply a device which *measures* electric power usage such that electric utilities are able to bill according to the actual amount of electricity used—nothing more. No other functionality is necessary for the meter to accomplish this sole purpose. No other functionality is necessary in order for an electric utility company to receive full and proper remuneration for its services so as to enjoy fully the original single purpose for which it was granted an easement.

In their original intent and as written, 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) apply to meters, only to meters, and to nothing but meters having the functionality just described. The provisions specified in these regulations do ***not*** apply to computers, and they do ***not*** apply to commercial-use radiofrequency broadcasting antennas and transmitters, and they do ***not*** apply to devices which demonstrably produce high-frequency voltage transients of RF conducted emissions and which in fact propagate such emissions into and through the electrical wiring of homes and buildings.

Pursuant to the Commission's policy-mandated smart meter implementation orders, the Complainants' electric service provider, nevertheless, is not seeking to replace the Complainants' present analog meter with simply another meter which likewise would be dedicated solely to the measurement of electricity usage. The company is seeking instead to install *additional* equipment consisting of an assemblage of other devices—euphemistically called a 'smart meter'—in the guise of a 'meter'. This composite collection of additional devices includes a computer and powerful, modulated radiofrequency radiation-producing devices—that is, dual-antenna radio receivers and transmitters. By invoking 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4) in threatening to terminate Complainants' access to electric service, the Complainants' electric service provider, with the imperative, impetus and complicity of the PA PUC, is thus seeking to completely alter and misapply the very definition and original meaning of the term '***meter***'.

Under such a broad definition of the term 'meter', a utility could include any assortment of equipment or set of devices as long as such could be integrated, consolidated or compacted into a unitary assemblage the size of a standard analog electric meter and which could be plugged into a standard meter socket.

The operation of a powerful, FCC-regulated, RF radio-transmission device owned by a party other than the owner of the home to which the device is attached constitutes, and is, a **use** by the operating party in the property of the homeowner. PPL Electric Utilities has never been given permission, authority or the right, by means of easement, license, permit, or any other contractual legal instrument or agreement, to install or operate such equipment on the Complainants' homes or properties. Moreover, neither Act 129, nor 52 Pa.C.S. §56.81(3), nor 66 Pa.C.S. § 1406(a)(4), separately or in combination, confer upon the electric utility the statutory authority or right to install or operate this equipment on the Complainants' homes or properties *without their consent*. The utility therefore is not entitled to such use of the Complainants' homes or properties without their consent.

Furthermore, in consequence of the fact that AMI wireless smart meter devices produce RF conducted emissions of high-frequency voltage transients *and* frequent, pulsed transmissions of modulated radiofrequency radiation—both of which could increase the risk of biological and/or adverse health effects even at low levels—the technology which utilizes these devices comes highly safety-impugned and therefore cannot be conclusively relied upon as a 'safe' and 'reasonable' use.

Over the Complainants' objections, PPL Electric Utilities, pursuant to the company's acting under color of law as an agent of the State, has acted in complete disregard of the original terms and intent of the existing easement, as if the company were lawfully empowered to unilaterally change these terms so as to use the Complainants' private homes and properties in the service of the company's own commercial interests, that is, to use the Complainants' homes as sites for the company's AMI smart meters to function within its mesh network partly as "relay points to transmit data" that does not originate from the Complainants' homes or properties.

The Fourteenth Amendment to the U.S. Constitution prohibits the State from enforcing Act 129 insofar as Act 129 would be used to restrict or deprive Complainants of their fundamental liberties and rights to protect themselves and their property. Even if Act 129 were a law which had been enacted to further a compelling governmental interest, it would have to have been narrowly constructed or tailored, employing the ***least restrictive*** measures possible to achieve that interest.

In accordance with the *Overbreadth Doctrine*, a statute or statutory provision which regulates actions or activities that are not constitutionally protected must not be written or applied so broadly as to restrict or adversely impact actions, activities, rights, privileges or immunities that *are* constitutionally protected.

The Complainants' being forced to endure chronic, long-term exposure to biologically interactive, modulated radiofrequency radiation and RF electromagnetic fields, produced by the wireless devices and facilities which PPL Electric Utilities would use on their homes, potentially could adversely impact their health and safety. Act 129, insofar as it is being construed by the Pennsylvania Public Utility Commission as a means of enforcement in compelling Complainants to give consent to PPL Electric Utilities to so use Complainants' homes as a condition of their having access to electric service, is therefore *overbroad* and manifestly unconstitutional in its application.

No law in this nation was ever written or intended to be used to justify or permit the forcible subjection of citizens to potentially increased risk of harm as a condition of having access to a vital necessity—in this case, electricity.

"Certainly, an act passed by a state legislature that directs a discriminatory result is state action and would violate the first section of the Fourteenth Amendment." *United States v. Raines*, 362 U.S. 17, 25 (1960).

"Pennsylvania Act 129, passed into law in 2008, **requires electric utilities with more than 100,000 customers to provide those customers with advanced meters** that have specific capabilities."

Because Act 129 exempts electric distribution companies with fewer than 100,000 customers from the requirements of implementing AMI smart meter technology, the customers of these companies are protected from having to suffer abridgement and violation of their constitutionally-secured rights by the enforcement of such policy as has been mandated on the basis of the PA PUC's misconstruction of the law. Enforcement of Act 129, as accomplished under the Commission's policy by making smart meters mandatory and not optional, contrary to the explicitly-expressed intent of the Pennsylvania General Assembly, and by applying this mandate to affect only select customers, denies those select citizens, including the Complainants, the ***equal protection of the laws*** as guaranteed under the Fourteenth Amendment to the Constitution of the United States.

If, pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), separately or in combination, the Pennsylvania Public Utility Commission permits PPL Electric Utilities—by means of the provider's threatening to terminate Complainants' access to electric service—to **coerce** the Complainants' consent to the use of their homes and property for the installation and operation of AMI wireless smart meter devices, such action, usurpation and use shall be in direct violation of the Complainants' due process and property rights established under easement and under the Pennsylvania Constitution and the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States.

SUMMARY and CONCLUSION:

The State is **prohibited** by the Fourteenth Amendment to the Constitution of the United States not only from making any law which shall violate or deprive Complainants' of their fundamental rights, it also is **precluded from enforcing** such a law—Act 129, in the instant case.

The Pennsylvania Public Utility Commission and PPL Electric Utilities, when acting in their capacities as agents of the State, are bound by the laws and statutes of the Commonwealth of Pennsylvania and by the laws, statutes and Constitution of the United States, and as such, the Commission and PPL Electric Utilities are prohibited from abridging or violating the rights, including property rights, of citizens of the United States.

There is no state or federal statute, law, regulation or rule that would permit PPL Electric Utilities, when acting in a capacity **as an agent of the State**, to act in a way that would encroach upon the Complainants' rights protected under the laws, statutes and Constitution of the United States.

Without the Complainants' consent and without due process of law, neither PPL Electric Utilities, nor the Pennsylvania Public Utility Commission, nor the Commonwealth of Pennsylvania has the statutory authority or right to seize, take, require, or make use of the Complainants' homes or properties for any purpose or in any manner or with any equipment, devices or facilities of any kind which have never been studied specifically for possible biological or adverse health effects and which never have been granted by easement, siting permit or license.

Because, in direct violation of the Complainants' rights protected under the Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States, enforcement by the Commission of its policy mandating smart meters pursuant to Act 129 ultimately requires, as a condition of the Complainants' having access to electric service, that PPL Electric Utilities in effect seize, take and/or make use of the Complainants' properties in a manner and with kinds of devices and facilities that not only never have been granted by easement, siting permit, license, or the Complainants' consent, but also never have been studied specifically for possible biological or adverse health effects, it is, in accordance with the Pennsylvania Constitution and the laws, statutes and Constitution of the United States, lawfully binding and incumbent upon the Commission to grant relief to the Complainants.

EXCEPTION NO. 2: 'Conclusions of law' asserted on page 17 of the ALJ's Initial Decision concerning Act 129 and the Commission's no-opt-out policy mandating universal installation of smart meters are fundamentally flawed and directly conflict with not only the Commonwealth Court's decision in *Povacz, et al. v. Pennsylvania Public Utility Commission*, but also the prevailing legislative intent of the Pennsylvania General Assembly as explicitly and publically expressed in the *Legislative Journal of the Pennsylvania Senate,* dated October 8, 2008, by at least three (3) Pennsylvania senators who directly participated in amending HB 2200 to its final form in Act 129.

THE COMMISSION'S MISCONSTRUCTION of the PREVAILING LEGISLATIVE INTENT of the PENNSYLVANIA GENERAL ASSEMBLY

MATTERS OF LAW and ASSERTIONS of FACT DERIVING DIRECTLY FROM THE LAW AS WRITTEN:

1. The exact language pertinent to this matter under **66 Pa.C.S. § 2807(f)(2) and § 2807(f)(7)** and enacted into law pursuant to **Act 129** is as follows (underlining, emphasis and italics added):

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

> **(7)** An electric distribution company may recover reasonable and prudent costs of ***providing*** smart meter technology **under paragraph (2)(ii) and (iii)**, as determined by the commission. This paragraph includes annual **depreciation** and capital costs **over the life of the smart meter technology** and the cost of any system upgrades that the electric distribution company may require to enable the use of the smart meter technology which are incurred after the effective date of this paragraph, less operating and capital cost savings realized by the electric distribution company from the installation and use of the smart meter technology. ...

2. In the Pennsylvania Public Utility Commission Hearing, dated January 24, 2013 and pertaining to *Maria Povacz v. PECO Energy Company* (PA PUC Docket No. C-2012-2317176), the following several statements were put forth as rationale and justification of the Commission's 'no opt-out' policy:

> "The ALJ stated that the use of the word 'shall' in the statute indicates the General Assembly's direction that all customers will receive a smart meter. Furthermore, noted the ALJ, there is no provision in the statute that allows customers to 'opt out' of smart meter installation ... ." (p. 6.)
>
> "The ALJ continued that neither the Commission's Orders implementing this provision of Act 129, nor PECO's specific implementation plan, allow customers to 'opt out' of smart meter installation." (p. 7.)
>
> "PECO relies, in part, on the following language from the Commission's *Smart Meter Implementation Order*, *supra*, to support its argument that the Complainant cannot opt out of the smart meter installation:
>
> > The Commission believes that it was the intent of the General Assembly to require all covered [Electric Distribution Companies] to deploy smart meters system-wide **when it included a requirement for smart meter deployment 'in accordance with a depreciation schedule not to exceed 15 years.'** 'the Commission's Order does not have a provision for customers to "opt out" of the smart meter installation.'" (p. 7.) (Underlining and emphasis added.)
>
> "Additionally, as noted by the ALJ, Section 2807(f)(2) of the Code, *supra*, is controlling here, and the use of the word 'shall' in the statute indicates the General Assembly's direction that all customers will receive a smart meter." (p. 10.)

3. The law, as stated, directs electric utility companies (EDCs) simply to furnish—that is, to offer, provide, or make available—smart meter technology under the conditions specified by Provisions (i), (ii) and (iii) of § 2807(f)(2) **and** by **§ 2807(f)(7)**, supra.

4. Provision (i) of § 2807(f)(2) requires EDCs to furnish—to offer, provide, or make available—smart meter technology to customers who request such and who agree to pay the cost of the smart meters at the time of their requests.

5. Provision (iii) of § 2807(f)(2) requires EDCs to furnish—to offer, provide, or make available—smart meter technology in accordance with a maximum 15-year schedule of depreciation as set forth under § 2807(f)(7).

6. Act 129 contains no explicit language which states that EDCs must install AMI smart meters on homes or properties of customers who do not want or do not consent to them.

7. Act 129 contains no non-vague language which clearly and unambiguously implies or would imply that EDCs must install AMI smart meters on homes or properties of customers who do not want or do not consent to them.

8. Act 129 contains no explicit language which states that smart meters are mandatory or that customers cannot opt out of having AMI smart meters installed.

9. Act 129 contains no non-vague language which clearly and unambiguously implies or would imply that customers cannot opt out of having AMI smart meters installed.

10. There is no provision in the statute, Act 129, that explicitly disallows customers from 'opting out' of smart meter installation.

11. There is no non-vague provision in the statute, Act 129, which clearly and unambiguously disallows or would disallow customers from 'opting out' of smart meter installation.

12. The absence of explicit *opt-out* language in Act 129 does not logically entail, and is not necessarily equivalent or tantamount to, an automatic, universal opt-in.

13. The language expressed by Provision (i) of § 2807(f)(2) is explicitly *opt-in* language, making the choice of having a smart meter installed optional on the part of the customer.

14. The interpretation of § 2807(f)(2) by the Pennsylvania Public Utility Commission is such that, explicitly on the one hand, customers can request a smart meter, that is, they can opt in or could have opted in, but implicitly on the other hand, they cannot opt out and could not have opted out.

15. Not only is this interpretation by the Commission inconsistent, it renders Provision (i) of § 2807(f)(2) as being virtually superfluous and practically moot, effectively preempting the legislative intent of the General Assembly as expressed in that provision. Even if customers had requested and agreed to pay for the installation of smart meters, they would not have been able to realize any advantage of doing so until their EDCs had implemented their Smart Meter Plans to make the requisite smart meter technology and system infrastructure available and fully functional.

16. As evidenced by the facts asserted in ¶ 2, supra, the Commission's 'no opt-out' policy pursuant to § 2807(f)(2) is predicated entirely upon the word "shall" and upon the Provision (iii) phrase: "in accordance with a depreciation schedule not to exceed 15 years."

17. The language of Provision (iii) of § 2807(f)(2) simply establishes a specified schedule, or limiting time frame.

18. Together, Provision (iii) of § 2807(f)(2) **and** Paragraph (7) of § 2807(f) specify clearly and unequivocally that **it is the new AMI smart meter facilities and equipment, which**, as the technology is implemented and made available to customers by their EDCs, **are permitted to be depreciated over a period not greater than 15 years.** (See ¶ 1, supra.**)**

19. The facts asserted in ¶¶ 17 and 18, supra, are confirmation that Provision (iii) of § 2807(f)(2) has everything to do with placing a time limit on depreciation o*f **new*** equipment, that is, of smart meter technology, as set forth under Paragraph (7) of § 2807(f), and nothing to do with establishing a mandate requiring system-wide implementation of AMI smart meter technolog*y with no customer opt-out*.

20. There is no non-vague language, explicit or implicit, clearly and unambiguously expressed in Provision (iii) alone, or in combination with any other part of § 2807(f)(2), which definitively would establish the Commission's 'no opt-out' interpretation of that paragraph under Act 129 as a mandate expressing the legislative intent of the General Assembly.

21. House Bill HB 2200 (Printer's No. 4429 version dated Sept. 23, 2008), contains the following language which was stricken as shown:

~~Section 4. Section 2807(e) of Title 66 is amended by adding a paragraph to read:~~

~~§ 2807. Duties of electric distribution companies.~~

...

~~(ii) Electric distribution companies shall furnish smart meter technology to:~~

~~(A) Customers responsible for 40% of the distribution company's annual peak demand within four years after the effective date of this paragraph.~~

~~(B) Customers responsible for 75% of the distribution company's annual peak demand within six years after the effective date of this paragraph.~~

~~(C) One hundred percent of its customers within ten years after the effective date of this paragraph.~~

In the same Printer's No. 4429 document, the above language was changed to:

SECTION 3. SECTION 2807(E) OF TITLE 66 IS AMENDED AND THE SECTION IS AMENDED BY ADDING SUBSECTIONS TO READ:
§ 2807. DUTIES OF ELECTRIC DISTRIBUTION COMPANIES.

...

(2) ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART METER TECHNOLOGY AS FOLLOWS:

(I) UPON REQUEST TO A CUSTOMER THAT AGREES TO PAY THE COST OF THE SMART METER.

(II) IN THE CONSTRUCTION OF A NEW RESIDENCE OR NEW BUILDING TO BE USED BY A COMMERCIAL CUSTOMER.

(III) IN ACCORDANCE WITH A SCHEDULE OF REPLACEMENT OF FULL DEPRECIATION OF EXISTING METERS.

The language of § 2807 thus had been changed at this point ***from*** the stricken

"(ii) Electric distribution companies shall furnish smart meter technology to: ... (C) One hundred percent of its customers within ten years after the effective date of this paragraph"

to

"(2) ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART METER TECHNOLOGY AS FOLLOWS: ... (III) IN ACCORDANCE WITH A SCHEDULE OF REPLACEMENT OF FULL DEPRECIATION OF **EXISTING** METERS."

Immediately prior to the enactment HB 2200 into law as Act 129, Provision (III) in the language of the foregoing version was changed ***from***

"(III) IN ACCORDANCE WITH A SCHEDULE OF REPLACEMENT OF FULL DEPRECIATION OF **EXISTING** METERS."

to

"(III) IN ACCORDANCE WITH A DEPRECIATION SCHEDULE NOT TO EXCEED 15 YEARS"

as also stated in ¶ 22, *infra*.

The phraseology of the earlier provision, "shall furnish smart meter technology to ... One hundred percent of its customers within ten years," may well have implied a system-wide mandate. However, by amendment, ***this provision was stricken*** and replaced simply with a provision which at first allowed for depreciation of ***existing*** meters over an indefinite period. Then, with one final modification of the latter provision, a definite time limit of 15 years was instead set for depreciation of the ***new*** AMI smart meters and, in accordance with Paragraph (7) of § 2807(f), was applicable **specifically** to the new AMI smart meters. Provision (iii) of § 2807(f)(2) therefore most clearly has everything to do with allowing for depreciation of new AMI smart meter equipment and nothing to do with establishing a mandate requiring system-wide implementation of AMI smart meter technology with no customer opt-out.

22. House Bill HB 2200 (Printer's No. 4526 version dated Oct. 7, 2008) thus includes the following language as further changed from that appearing in the Printer's No. 4429 version:

SECTION 3. SECTION 2807(E) OF TITLE 66 IS **AMENDED** AND THE
SECTION IS AMENDED BY ADDING SUBSECTIONS TO READ:

§ 2807. DUTIES OF ELECTRIC DISTRIBUTION COMPANIES.

...

(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 THE REQUEST.

(II) IN NEW BUILDING CONSTRUCTION.

(III) IN ACCORDANCE WITH A DEPRECIATION SCHEDULE NOT TO EXCEED 15 YEARS.

This is the language of the *final version* of § 2807 of HB 2200 *as amended by the Pennsylvania Senate*. It is this version of § 2807 which is expressed in the exact language as that under § 2807(f)(2) of Title 66 of the Public Utility Code and which was enacted into law under Act 129.

23. In the ***Legislative Journal of the Pennsylvania Senate,*** dated October 8, 2008, at least three (3) Pennsylvania senators representing both major political parties are on public record as having stated ***explicitly*** that **smart meters were not mandated**. Consistent with the sequence in the series of changes made to the language of § 2807, as previously shown by the provisions stated in ¶¶ 21 and 22, supra, and ***consistent with the explicit statements made by these senators*** *concerning the Senate's* ***final amendments*** *to HB 2200,* ***smart meters were not and would not be mandatory, but were made optional*** to ratepayers. Specifically:

"It also contains language in there that we will have smart meters. **It is not mandated**, but it allows for the deployment of smart meters through a depreciation process, through new home construction process, and through the depreciation of 15 years, and for anyone who wants to purchase a smart meter which they feel will help them manage their electric load better."
—Senator Tomlinson (*Senate Legislative Journal*, p. 2626.) (Underlining and emphasis added.)

"We also made sure that **smart meters would not be mandated** for every single ratepayer. Not only is that a smarter approach to smart meter deployment, but it will also save electric customers hundreds of millions of dollars paying for something that will not provide a real benefit in their own households."
—Senator Boscola (*Senate Legislative Journal*, p. 2627.) (Underlining and emphasis added.)

"In addition, **we did not mandate smart meters**, but **we made them optional**. We did say in new construction, where they really are practical, they will be put in."
— Senator Fumo (*Senate Legislative Journal*, p. 2629.) (Underlining and emphasis added.)

As thus amended by the Pennsylvania Senate on the matter concerning smart meters, the final version of HB 2200, ***with the amendments making smart meters non-mandatory***, was passed by the Senate by an overwhelming majority of **47 to 3**. (*Legislative Journal - Senate*, October 8, 2008, p. 2631.) The bill was then returned to the Pennsylvania House for a final vote.

To the Speaker of the House's question: "**Will the House concur in Senate amendments?**", HB 2200 as amended by the Pennsylvania Senate was passed by the Pennsylvania House of Representatives by an overwhelming majority of **186 to 4** such that "...**the question was determined in the affirmative and the amendments were concurred in**." (*Legislative Journal of the Pennsylvania House of Representatives***,** dated October 8, 2008, p. 2327.) (Underlining and emphasis added.)

HB 2200 was thus enacted by the Pennsylvania General Assembly and signed into law as Act 129 by then-Governor Rendell.

24. It is unequivocally clear that the ***prevailing* legislative intent** enacted into law by Act 129 expresses the Pennsylvania General Assembly's direction that **smart meters were not made and would not be made mandatory**.

25. Nonetheless, according to the PA PUC, the PA Supreme Court, in its *'Povacz II'* ruling (Aug. 2022), "found that Section **2807(f)(1)**, when read in conjunction with Section **2807(f)(2)**, provides instructions for furnishing smart meters to ***all*** customers." (PUC Public Meeting, Nov. 9, 2023.) **However, the Supreme Court failed to consider the Legislature's clear direction given in Section 2807(f)(2) of Act 129.**

(See also ATTACHMENT II, 'Select Quotations of the PA Commonwealth Court in *Povacz, et al. v. Pennsylvania Public Utility Commission*' which concur with the Complainants' detailed analysis, supra, and which are wholly consistent with the prevailing legislative intent of, and direction given by, the Pennsylvania General Assembly as to whether or not smart meters were mandated pursuant to Act 129.)

26. The Pennsylvania Public Utility Commission has jurisdiction over the state's public electric utility companies.

27. The Commission does not have statutory authority or jurisdiction over the public's right to deny consent.

28. The PA PUC has authority to mandate that PPL Electric and the state's other electric utility companies ***offer*** AMI wireless smart meters for use by the public, but the Commission cannot, especially in the absence of specific direction given by the Pennsylvania Legislature to do so, mandate or require that the utilities install smart meters on the private properties of persons who do not want or do not consent to them.

MATTERS of LAW: ARGUMENTS

The policy of mandatory installation of AMI smart meters that has been adopted by the Pennsylvania Public Utility Commission and implemented by the electric utility companies is the product of a complete misinterpretation and misconstruction of the prevailing legislative intent of the Pennsylvania General Assembly as such was set forth and enacted into law under Act 129.

Accordingly, insofar as the enforcement of § 2807(f)(2) under Act 129 were to have remained in keeping with the expressed, prevailing legislative intent of the General Assembly, PPL Electric Utilities and the state's other regulated electric utility companies have **no basis in law** pursuant to Act 129 to terminate electric service to customers who do not give consent to the installation of AMI smart meters on their homes or properties.

Furthermore, in the absence of a compelling governmental interest, the State is ***prohibited*** from ***making*** **or enforcing** ***any*** **law** such as Act 129 which would have the effect of depriving citizens of their fundamental rights protected under the Constitution of the United States. Even if the state were to have a compelling interest in having enacted Act 129, the law must be narrowly drawn such that the ***least restrictive means possible*** are used to achieve its objectives.

Despite the prevailing legislative intent of Act 129 which did not mandate smart meters, the fact that the language set forth in § 2807(f)(2) does not *explicitly* state that customers can opt out of having these meters installed has rendered Act 129 vulnerable to the misinterpretation and misconstruction that has resulted in the Commission's present policy mandating smart meters.

Surmising and constructing its interpretation of Act 129 from the existing vagueness in the language set forth in § 2807(f)(2), while providing no more justification for having mandated smart meters than a tenuous **belief**, the Commission revealed its decision to introduce and impose its own meaning and intent into the law:

> "The Commission believes that it was the intent of the General Assembly to require all covered [Electric Distribution Companies] to deploy smart meters system-wide when it included a requirement for smart meter deployment 'in accordance with a depreciation schedule not to exceed 15 years.'" (Commission's *Smart Meter Implementation Order,* also referenced in ¶ 2, *supra.*)

The Pennsylvania Public Utility Commission's policy mandating smart meters constitutes ***administrative overreach*** and was made possible only because of this vagueness in the language of § 2807(f)(2). The Commission, however, is charged with implementing and enforcing the law **pursuant to the law's actual, legislated intent**, not with second-guessing the expressed will of the Legislature to make new law.

Not only does the Commission's policy mandating smart meters not comport with the *Overbreadth Doctrine*, insofar as the language of § 2807(f)(2) is vague and thus open to such misconstruction and misapplication, Act 129 itself fails to comport with the ***Vagueness Doctrine*** which requires statutes to be clear and well-defined and to adequately describe or specify statutory regulations as to precisely what, under what conditions, and the means by which they are to regulate.

Therefore, because the Commission's policy, mandating smart meters pursuant to Act 129, is predicated entirely upon § 2807(f)(2), is excessively restrictive and harmful in its effect upon citizens' fundamental rights protected under the Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States, and, as previously put forth, ***denies*** a select faction of citizens the ***equal protection of the laws***, this policy is, in and of itself, unconstitutional.

PPL Electric Utilities and the state's other electric utility companies therefore have no basis in law, pursuant to the Commission's policy mandating smart meters, to terminate electric service to customers who do not give consent to the installation of AMI smart meters on their homes or properties.

It is the Commission's inherently unconstitutional policy of mandating smart meters that has opened the door to the wrongful and unlawful acts committed by PPL Electric Utilities and other state-regulated electric utility companies, enabling them as 'State actors', or agents of the State (See **Attachment I, '*State Action Doctrine*'**), to carry out their smart meter programs **by means of harassment, threats, intimidation and coercion—all under color of law**.

These violations therefore give rise to actionable cause under the Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States. (Were the Complainants to seek relief and redress of their grievances in the courts, protection of their rights under these amendments to the Constitution could be further secured and pursued under USC 18 Section 241, USC 42 Section 1983, USC 42 Section 1985(3), and USC 42 Section 1986.).

SUMMARY and CONCLUSION:

Because, in the enactment of Act 129, the Pennsylvania General Assembly's direction and ***explicitly expressed*** legislative intent was that smart meters were "**not mandated**" **and** "**would not be mandated**,"

and

because the Pennsylvania Public Utility Commission's enforcement of its policy mandating smart meters pursuant to the Commission's misconstruction and improper interpretation of Act 129,

(1) is in direct violation of citizens' rights protected under the Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States,

(2) does not meet the ***strict scrutiny standard*** of satisfying a ***compelling*** governmental interest in the ***least restrictive means possible***,

(3) does not comport with the ***Vagueness Doctrine*** as set forth by the U.S. Supreme Court,

(4) does not comport with the ***Overbreadth Doctrine*** as set forth by the U.S. Supreme Court, and

(5) deprives citizens of ***due process*** and of the ***equal protection of the laws***,

it is, in accordance with the Pennsylvania Constitution and the laws and Constitution of the United States, lawfully binding and incumbent upon the Commission to grant relief to the Complainants.

EXCEPTION NO. 3: The ALJ erred in dismissing the Complainants' Amended Complaint by largely relying upon conclusions of law that directly conflict with both the Commonwealth Court's decision in *Povacz* and the prevailing legislative intent of the Pennsylvania General Assembly and also by failing to acknowledge the full depth and scope of PPL Electric's responsibility to its customers pursuant to Pa. C.S. § 1501. (All statements under EXCEPTION NO. 2, supra, are incorporated hereunder.)

On page 17 of her Initial Decision, ALJ Barnes stated the following two (2) 'conclusions of law' that directly conflict with the Commonwealth Court's decision in Povacz:

No. 15. "PPL is legally required to install the RF Mesh meter on the Complainant's property by Act 129 and Commission orders."

and

No. 16. "Nothing in Act 129 permits a customer to "opt-out" of a smart meter installation."

The Commonwealth Court soundly repudiated these assertions by the ALJ, stating:

"**[N]othing in the statutory language affirmatively mandates that customers must allow installation of wireless smart meters**." (Emphasis and underlining added.)

"**[N]nothing in the language of Act 129 facially *requires* every customer to endure involuntary exposure to RF emissions from a smart meter**." (Emphasis and underlining added.)

"Rather, the language of Act 129 seems calculated to support customer ***choice*** in the use of smart meter technology."

> "[I]n considering accommodations to Consumers on remand, the PUC should consider whether accommodations are appropriate ***without*** proof of harm, **so that Consumers may choose to avoid RF emissions from wireless smart meters** ... ." (Emphasis added.)
>
> "... We reverse the PUC's conclusion that it lacks authority to accommodate Consumers' desire to avoid RF emissions from smart meters and vacate the PUC's determination that such accommodation would not be reasonable. ... **On remand, the PUC should consider all reasonable accommodations, including, but not limited to, deactivation of the RF emitting functions of the smart meters; ... and installation of wired rather than wireless smart meters, if (as Consumers contend) such technology is available**." (Emphasis and underlining added.)

Indeed, Pa. C.S. § 1501 provides that:

> "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."

Paraphrasing another Pennsylvania public utility customer: The PUC Administrative Law judges and the Commission pretend to allow citizens to be heard, but subvert the law, as written and intended, to their liking, ... and then place the burden of proof on citizens to defend themselves and the law.

EXCEPTION NO. 4: By illogically concluding, in her interlocutory Order, that merely because the Complainants had not provided copies of their medical records in response to PPL Electric Utilities' Interrogatories to Complainants Set I, No. 4, the Complainants "will not experience any medical conditions or issues from the installation of PPL Electric's AMI meter," ALJ Barnes thus erred in granting PPL Electric's Motion for Sanctions. (See Order Granting PPL Electric Utilities Corporation's Motion in Limine and Motion for Sanctions, https://www.puc.pa.gov/pcdocs/1664299.docx , Page 2, Order No. 4.)

In their **Answer in Opposition to Motion for Sanctions** (https://www.puc.pa.gov/pcdocs/1660744.pdf), and in their **Motion to Remove Sanctions** (https://www.puc.pa.gov/pcdocs/1674878.pdf), their **Reply to Respondent's Answer in Opposition to Motion** (https://www.puc.pa.gov/pcdocs/1677941.pdf**),** and their **Amended Motion to Remove Sanctions** (https://www.puc.pa.gov/pcdocs/1678681.pdf), the Complainants have shown clearly and conclusively that Respondent PPL Electric's argument in support of its Motion for Sanctions was logically incoherent and unsound on its face and, based entirely upon specious reasoning, was therefore completely without merit. The Complainants' medical records absolutely were NOT, any more than were their drivers' licenses, materially relevant to their Complaint, and ALJ Barnes, by accepting the Respondent's fallacious argument, erred in failing to recognize or acknowledge that fundamental fact.

The Respondent spuriously has argued that the Complainants' medical information is "necessary to determine whether the installation of a PPL Electric AMI meter will cause or contribute to any adverse medical conditions or biological effects that the Complainants assert they may experience."

The Respondent fallaciously has attempted to justify the preceding contention by further asserting that "[w]ithout medical records documenting the health and medical conditions of the Complainants before a PPL Electric AMI meter is installed there is no reasonable basis upon which the Commission could determine that any health or medical conditions the Complainants assert they may exhibit after a PPL Electric AMI meter is installed were caused by the AMI meter. The pre-installation medical records are essential to determining whether any post-installation condition asserted by the Complainants could have actually been caused by the AMI meter; without such records there is no evidence of a 'status quo' prior to the installation of the AMI meter with respect to the Complainants' health and medical conditions."

If, **after** such time that PPL Electric were to have installed AMI smart meters upon the homes of the Complainants, **then and only then** would the Complainants' medical records possibly be relevant, depending on whether the Complainants were to claim to have experienced adverse health effects as a result of the meters. It absolutely is not necessary to establish evidence of a 'status quo' with respect to the Complainants' health and medical conditions **prior to** the installation of PPL Electric's AMI meters. If the Complainants were to complain to the Commission of adverse health effects at a time following the installation of PPL Electric's AMI meters, the Complainants' medical records provided **at that time** certainly would contain all pre- and post-installation medical information—including dates of any and all diagnoses and treatments—necessary for establishing a reasonable basis upon which the Commission could make a proper determination.

Therefore, because PPL Electric's meters have not been installed to date on the Complainants' homes, in addition to the fact that the Complainants have not alleged that they presently have any pre-existing adverse medical or health conditions, the Complainants' medical records are not relevant to their Complaint, and the Respondent's argument, as re-stated in ¶ 10, supra, alleging the present necessity of these records, is invalid.

PPL Electric's flawed argument would further imply that customers could have cause to challenge the safety and/or reasonableness of the Company's AMI meters only **after** the installation of these devices, that is, only after their having been exposed to the RF radiation and fields produced by the installed meters.

Even though we, the Complainants, have not provided our medical records, we have every right under due process, and through means of argumentation and cross-examination, to challenge fully the safety and/or unreasonableness of PPL Electric's AMI meters pursuant to 66 Pa. C.S. § 1501.

However, the sanctions that unjustly and unjustifiably have been imposed by ALJ Barnes upon the Complainants have profoundly adversely affected the Complainants' ability to litigate their case in all subsequent proceedings, including the evidentiary hearing held on August 6, 2020. Because of the sanctions, the Complainants specifically were precluded from cross-examining the Respondent's expert witnesses and from asserting any claim or entering any evidence into the record that would support allegations challenging the reasonableness of the installation of PPL Electric's smart meters insofar as such were to concern issues of health and safety.

The Complainants consequently have been unjustly deprived of fully exercising their rights under due process, with the result that the Complainants' case has suffered severe prejudice and has been obstructed and encumbered with an utterly incomplete record, as reflected in the Initial Decision of ALJ Barnes.

Additionally, the Commonwealth Court has concluded that Act 129 does not preclude accommodations of customers' health concerns, **regardless of proof of harm**. (*Povacz et al. v. Pennsylvania Public Utility Commission*, No. 492, C.D. 2019.) Because both the Respondent's Interrogatories request for the production of Complainants' medical records and the ALJ's Order granting PPL Electric's Motion for Sanctions were predicated on requiring the Complainants to produce their medical records to show or prove harm or the potential for harm resulting from the installation of PPL Electric's AMI smart meters, it is appropriate and lawful that the ALJ's Interlocutory Order granting sanctions be reversed and the sanctions be removed.

It is just and proper that the Commission not preclude the Complainants from exercising their rights provided under the Constitution of the United States to protect themselves from any act by the State or agent of the State which would condition Complainants' access to electricity, a basic and vital necessity of modern life, upon the use of their very homes and property in such a way that Complainants would be forcibly and involuntarily exposed, in perpetuity, to RF, an agent which, on the basis of sufficiently strong scientific evidence, has been specifically identified and classified as a possible human carcinogen and associated positively with biological hazard and risk.

The Complainants clearly should not have been, and should not continue to be, precluded from exercising their due process right to fully litigate claims that radiofrequency radiation and RF fields resulting from the operation of PPL Electric's AMI meters, were such devices to be installed on the Complainants' homes, potentially could cause or increase the risk of future biological and/or adverse health effects.

The Complainants therefore have filed this **Exception** to the ALJ's Interlocutory Order granting sanctions that previously have been imposed upon them and which have deprived them of due process, which, in accordance with "the principles of common fairness," would have permitted them the "opportunity to be heard on the issues" (*Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014)) and to "conduct such cross-examination as may be required for a full and true disclosure of the facts." (66 Pa. C.S. § 332(c).)

EXCEPTION NO. 5: In granting Respondent PPL Electric's Motion in Limine, ALJ Barnes (1) erred in failing to admit entry into the record a number of the Complainants evidentiary exhibits that satisfy the criteria set forth in 52 Pa. Code § 5.406(a)(1) and/or §5.406 (a)(2) for public documents, and (2) acted to effectively block, to an unreasonable degree, entry into the record of many of the Complainants' evidentiary exhibits which fully satisfy the evidentiary standards and criteria set forth in Subsection C of Section II, 'Legal Standards' (supra), as highly relevant, highly credible and reliable evidence of definite probative value.

In both their **Amended Complaint** (https://www.puc.pa.gov/pcdocs/1636175.pdf) and their **Motion in Opposition to PPL Electric's Motion in Limine** (https://www.puc.pa.gov/pcdocs/1660960.pdf), the Complainants brought forth a voluminous amount of highly relevant, highly credible and reliable evidence of definite probative value which would constitute a preponderance of evidence acceptable to any reasonable mind that forced, chronic, long-term exposure, even at very low levels, to the radiofrequency radiation and RF fields produced by PPL Electric's AMI wireless smart meters poses a substantive risk to health and safety, and it is therefore absolutely **NOT reasonable** for either PPL Electric or the Commission effectively to compel customers to endure such exposure in perpetuity as a condition of receiving electric service.

A substantial number of the evidentiary exhibits brought forth by the Complainants in both their **Amended Complaint** and their **Motion in Opposition to PPL Electric's Motion in Limine** were, in accordance with 52 Pa. Code § 5.406(a)(1) and/or §5.406 (a)(2), **public documents**.

Copies of a flash drive (or 'thumb' drive) containing the Complainants' evidentiary exhibits had been submitted along with their Amended Complaint to the Respondent, ALJ Barnes, and the PUC Secretary's Bureau. Copies of another flash drive containing the Complainants' 'Additional Evidence' had been submitted likewise to the same parties. Partial transcripts of the contents of many of these exhibits are viewable by downloading copies of the **Amended Complaint** (https://www.puc.pa.gov/pcdocs/1636175.pdf) and the Complainants' **Motion in Opposition to PPL Electric's Motion in Limine** (https://www.puc.pa.gov/pcdocs/1660960.pdf) Complete copies of the **Amended Complaint** and many of the Complainants' evidentiary exhibits are viewable and downloadable from:
https://drive.google.com/drive/folders/1MEppT6HqTZQXQs7LqKoPvzfOSK5iqiRF?usp=sharing and
https://drive.google.com/drive/folders/12D_pEtvayVFfWDfUTTRaKm2aOx5dJ1DS ('Additional Evidence').

Those of the Complainants' evidentiary exhibits which satisfy public documents criteria under §§ 5.406(a)(1) and/or 5.406(a)(2) include, but are not limited to:

(In Amended Complaint)
EXHIBIT 1B
Expert Report of Andrew A. Marino. https://andrewamarino.com/PDFs/testimony-AAM_Report.pdf

EXHIBIT 4A
Letter from Dr. Norbert Hankin, PhD, Center for Science and Risk Assessment, and Frank Marcinowski, Director, Radiation Protection Division, U.S. Environmental Protection Agency, 2002

EXHIBIT 4B
Letter of recommendations to the FCC from Margo T. Oge, Director, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency (ET Docket No. 93-62)

EXHIBIT 4E
Letter from the Director, Office of Environmental Policy and Compliance, U.S. Department of the Interior, to the National Telecommunications and Information Administration, U.S. Department of Commerce

EXHIBIT 13
U.S. Congressional hearing testimony given by Dr. Ronald B. Herberman, MD, Dr. David O. Carpenter, MD, et al., on RF radiation exposure and cell phone usage

EXHIBIT 14
Health Effects of Cell Phone Use. U.S. Senate hearing testimony of Dr. Devra L. Davis, PhD, MPH, University of Pittsburgh Professor of Epidemiology ...

EXHIBIT 19E
International Encyclopedia of Neuroscience - *Electromagnetic fields, the modulation of brain tissue functions — A possible paradigm shift in biology*. Dr. W. Ross Adey, MD, Distinguished Professor of Physiology, Loma Linda University School of Medicine

EXHIBIT 20C
DNA damage in Molt-4 T-lymphoblastoid cells exposed to cellular telephone radiofrequency fields in vitro. Phillips, JL, et al., Bioelectrochemistry and Bioenergetics 45 (1998) 103–110. Pettis VA Medical Center, Loma Linda

EXHIBIT 21C-5
Evaluation of the Potential Carcinogenicity of Electromagnetic Fields. U.S. Environmental Protection Agency Office of Environmental and Health Assessment Office of Research and Development, October, 1990

EXHIBIT 22A
IARC/WHO Press Release No. 208, 31 May 2011

EXHIBIT 23
NTP Technical Report on the Toxicology and Carcinogenesis Studies in Hsd:Sprague Dawley Sd Rats Exposed to Whole-Body Radio Frequency Radiation at a Frequency (900 MHz) and Modulations (Gsm and Cdma) Used By Cell Phones. U.S. National Toxicology Program Final Report, November 1, 2018

EXHIBIT 29C-4
County of Santa Cruz proposed ordinance with attached memorandum entitled ***Health Risks Associated with SmartMeters***

EXHIBIT 30E
Letter from U.S. Food and Drug Administration Jefferson Laboratories, National Center for Toxicological Research to National Toxicology Program, National Institute for Environmental Health Sciences, NIEHS, dated May 19, 1999.
https://ntp.niehs.nih.gov/ntp/htdocs/chem_background/.../wireless051999_508.pdf

EXHIBIT 44L-1
Congressional Staff Briefing. *Electromagnetic Fields: The Science on Human Health Effects*. Dr. Ted Litovitz, PhD

EXHIBIT 6G (on web, not in Amended Complaint)
Electromagnetic Field Effects on Cells of the Immune System: The Role of Calcium Signalling. J. Walleczek, Research Medicine and Radiation Biophysics Division, Lawrence Berkeley Laboratory, July 1991, with support by Office of Biological and Environmental Research, U.S. Dept. of Energy

(See also **Attachment III, 'Testimonies Given By Eminent Scientific And Public Health Experts On Matters Concerning Smart Meter Safety'.**)

(In 'Additional Evidence')

EXHIBIT 5
Effects of ELF Fields on Calcium-Ion Efflux from Brain Tissue in Vitro. Carl F. Blackman, et al., Health Effects Research Laboratory, U.S. Environmental Protection Agency (https://www.jstor.org/stable/3575923?read-now=1&seq=1)

EXHIBIT 6
Health Effects of Transmission Lines - U.S. House of Representatives Oversight Hearing - Statement of Sheldon Meyers, Director, Office of Radiation Programs, U.S. Environmental Protection Agency (https://babel.hathitrust.org/cgi/pt?id=pst.000013370435&view=1up&seq=1)

EXHIBIT 10
National Toxicology Program Peer Review of the Draft NTP Technical Reports on Cell Phone Radiofrequency Radiation (March 26-28, 2018) (https://ntp.niehs.nih.gov/ntp/about_ntp/trpanel/2018/march/peerreview20180328_508.pdf)

EXHIBIT 12
Biological Effects of Electromagnetic Radiation (Radiowaves and Microwaves) - Eurasian Communist Countries. Defense Intelligence Agency, U.S. Army Medical Intelligence and Information Agency

EXHIBIT 15
Partial Results of NTP Chronic Carcinogenicity Studies of Cell Phone Radiofrequency Radiation in Rats. Linda S. Birnbaum, PhD, Director, NIEHS, National Toxicology Program (https://ehtrust.org/wp-content/uploads/Linda-Birnbaum-.pdf)

In her interlocutory Order granting PPL Electric's Motion in Limine, issued in indiscriminate, blanket fashion, and with no reason or reasons given, the ALJ erred in denying any and all of the Complainants' exhibits that fully satisfied either or both of the criteria set forth in §§ 5.406(a)(1) and 5.406(a)(2).

EXCEPTION NO. 6: The ALJ erred in dismissing Complainants' Complaint on the basis of concluding that the Complainants failed "to prove by a preponderance of evidence that the installation of this smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501." (Initial Decision, p. 14.)

The Complainants have shown copiously and conclusively by having brought forth **public documents**, findings of multiple peer-reviewed scientific studies, and even a definitive medical handbook on the biological effects of electromagnetic fields, all demonstrating a preponderance of evidence that:

(1) It is incontrovertibly the case that the FCC safety guidelines for RF exposure do NOT account for all possible mechanisms of interaction of RF with biological structures and systems, and

(2) The science is settled **beyond reasonable doubt** that such interactions in fact can and do occur which do NOT involve thermal mechanisms or acute exposure to RF.

By continuing the pattern followed in other smart meter cases, of misplacing the burden upon the Complainants such that they are required to conclusively prove harm by producing a preponderance of evidence that wireless smart meters are unsafe, the ALJ has failed to consider the FACT that **there is absolutely no established guideline or standard of safety** that would protect against any of the non-thermal mechanisms of interaction for RF that are known to exist. This fact, among others, directly speaks, pursuant to 66 Pa. C.S. § 1501, to the utter **unreasonableness** of forcing the Complainants to endure chronic, long-term exposure to the RF radiation and fields produced by PPL Electric's AMI meters as a condition of their continuing to receive electric service.

PPL Electric should no longer be permitted, on procedural grounds and at the expense of the Complainants' rights to discovery and due process, to escape the legal ramifications following from the **FACTS** (most of which the Commission and the Administrative Law Court certainly are aware) that:

1) Based upon **sufficiently strong evidence** for **increased risk** of certain cancers, RF radiation and fields have been classified by the WHO/IARC as a possible human carcinogen (Group 2B). This classification **applies to all RF radiation and fields, regardless of source**.

2) In its **intensively peer-reviewed final report**, the National Toxicology Program (NTP) of the National Institute of Environmental Health Sciences (NIEHS) and National Institutes of Health (NIH) published findings of **"clear evidence"** of cancer causation in animal test subjects exposed to RF radiation at 900 MHz, which very closely approximates the frequency transmitted by PPL Electric's AMI meters.

3) To *forcibly* subject persons to chronic, long-term exposure to a definitely possible human carcinogen is to *forcibly* subject them to chronic, long-term exposure very possibly to a definite human carcinogen.

4) On September 25, 2008, at a U.S. House subcommittee hearing on cell phone radiation, Dr. Julius Knapp, then-Director of the Office of Engineering & Technology, Federal Communications Commission, testified that: "The FCC staff is not sufficiently qualified to speak with authority to the science of health effects of RF absorption in the bodies—body." He further testified: "The FCC doesn't have the expertise to evaluate whether the standard is appropriate protection level for the cases that were discussed here."

5) The FCC safety guidelines pertaining to RF exposure do **NOT** account for causal mechanisms of interaction that do not involve tissue heating or acute exposures such as electric shock. On the basis of **overwhelming evidence**, science has established **beyond reasonable doubt** that, with respect to interactions of RF with biological structures and systems, there definitely **are** causal mechanisms active with RF exposure **other than** ones that involve tissue heating or electric shock, and the FCC safety guidelines simply do **NOT** apply to these other mechanisms.

6) There currently is **no guideline or set standard of safety** that applies to any of these other non-heating (non-thermal) and non-acute mechanisms of interaction such that there are established levels or durations of exposure of humans to RF below which such exposures can be considered safe.

7) According to testimony given on October 6, 1987 at a subcommittee hearing of the U.S. House of Representatives by Sheldon Meyers, then-Director of the Office of Radiation Programs of the U.S. Environmental Protection Agency: "empirically, **it is not possible to assign a low intensity limit or threshold below which the exposures are without effect.**" ... "The research information now available, both from EPA and others, **demonstrates that biological systems do respond** when exposed to ELF fields." (Underlining and emphasis added.)

8) AMI wireless smart meter devices (and AMI wireless mesh networks) have never been tested for safety specifically with regard to the potential hazards and risks posed by the forms and manner in which they produce radiofrequency radiation and RF fields. (Note: A study in New Zealand, referenced in a previous Commission hearing and entitled: *Health and Safety Aspects of Electricity Smart Meters*, is an industry-sponsored report focusing primarily on a relative comparison between smart meters and cell phones with regard to RF emission levels. In fact, it is reported in this paper that: "research papers continue to be published concerning non-thermal, biological effects of SARs **much lower than those specified in the standards**, including by well respected teams and individuals [Salford et al]. Many more such papers are listed in the WHO EMF project database." (Emphasis and underlining added.)

9) There have been no proceedings initiated by a motion of the Commission pursuant to 66 Pa.C.S. §315(c) requiring regulated electric utilities, including the Respondent, to prove or show specifically that their AMI wireless smart meter devices and facilities are in fact safe, particularly with regard to the forms and manner in which they emit, transmit and/or otherwise produce radiofrequency radiation and RF fields.

It is utterly ludicrous to expect, given the preceding facts, that chronic, long-term, forcible exposure to even low levels of RF radiation and fields produced by AMI wireless smart meters, which have never been tested specifically for safety, should be accepted in any way as '***reasonable***'**.** As the Complainants, in their Amended Complaint, previously have stated:

"This complaint is NOT simply about opting out of installation of wireless smart meters. It is about deprivation by government of our most fundamental and sacrosanct liberty—the right to protect and defend ourselves and our family, our health, our property and our homes. It is about actions taken by PPL and the Pennsylvania Public Utility Commission which *directly* violate and deprive us of these rights that are secured under the Pennsylvania Constitution and the laws and Constitution of the United States.

"No rational, impartial, unbiased person of sound reason who views the demonstrations and thoroughly reads and adequately understands the overall compelling scientific evidence, scientists' testimonies and pertinent information brought forth in this complaint would conclude or could honestly claim in earnest that chronic, continual, day-and-night, long-term exposure to radiofrequency radiation and electromagnetic fields produced by wireless smart meters is safe and without hazard or substantive risk of adverse effect upon public health and safety and that such exposure cannot, could not, does not, and will not cause harm to the people and citizens of this state.

"For the State, or an agency or agent acting under authority of the State, while being entrusted with protecting the health and safety of its millions of citizens, to not inform them of the scientifically substantiated hazards and risks of exposure to radiofrequency radiation and electromagnetic fields, but to instead forcibly subject them, through means of coercion under color of law, to involuntary, chronic, long-term radiofrequency irradiation and exposure to RF electromagnetic fields produced by wireless smart meter devices and technology, constitutes, at minimum, the commission by the State, and/or its officials and agents, of an egregious breach of trust and a gross, unlawful transgression and injustice against the people."

EXCEPTION NO. 7: The ALJ erred utterly in her determination that "PPL is not a 'state actor'" and in her assertion, citing *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974), that PPL simply "is a private, regulated utility company not constrained by the Fourth Amendment." (Initial Decision, p. 13.)

In their Amended Complaint, the Complainants have fully set forth in great detail the reasons why PPL Electric most certainly is a 'state actor' in the instant case. A document entitled **'State Action Doctrine'** (**Attachment I)** which immediately follows the present document and conclusively shows that the ALJ's opinion is completely misguided.

EXCEPTION NO. 8: In addressing the Complainants' privacy concerns (Initial Decision, pp. 13-14), the ALJ's analysis is perfunctory at best and fails to take into consideration important fundamental differences between circumstances in the Naperville case and the conditions concerning the privacy of smart meter data as they currently exist in Pennsylvania. The ALJ also erred in completely ignoring the allegation brought forth in the Complainants' Amended Complaint that the manner and degree to which PPL Electric uses smart meters to collect and transmit customer data constitutes electronic surveillance as defined and expounded under 50 U.S.C. 36, Subchapter I, §§ 1801(f), 1809(a), 1810, and 1812.

Although the Appeals Court in *Naperville* also found that the municipality's 'search' was reasonable, **it explicitly cautioned that its holding depended "on the particular circumstances of this case**." (Underlining and emphasis added.)

In reaching its opinion in *Naperville*, the Court took into account the following fundamental facts:

> 1) Naperville's utility, which is publicly-owned, had adopted a clarifying "Smart Grid Customer Bill of Rights" policy pledging that **customers' data will *not* be provided to third parties, including law enforcement, without a warrant or court order**; and
>
> 2) The collection interval of customer data by the use of smart meters in that case was **not less than fifteen minutes**.

The Court in *Naperville* additionally admonished: "**Were a city to collect the data at shorter intervals, [its] conclusion could change**."

That Court also asserted that its "**conclusion might change if the data was more easily accessible** to law enforcement or other city officials **outside the utility**."

The Pennsylvania Public Utility Commission has **directed** that the smart meter technology of covered EDCs, including PPL Electric, **must support** at least the following capabilities:

> 1) Ability to provide 15-minute **or shorter** interval data **to** customers, EGSs, **third-parties** and the regional transmission organization ("RTO") on a daily basis, consistent with the data availability, transfer and security standards adopted by the RTO.
>
> 2) **Ability to upgrade these minimum capabilities as technology advances and becomes economically feasible**.
>
> 3) Ability to **remotely program** the meter.

The PA PUC has given PPL and the state's other electric utilities free reign to collect customer data at sub-15-minute intervals with no lower limit to granularity. (See assertion 14, supra.)

The level of vulnerability of customers' privacy and the potential for misuse and abuse of the data collected from them by PPL also differ radically from the circumstances in the *Naperville* case, where **customers' data was not to be provided to third parties**, including law enforcement, without a warrant or court order.

If the Court in *Naperville* had been given to scrutinize the same set of circumstances as presently exist in Pennsylvania with regard to widespread third-party access to, and the vulnerabilities and potential abuses of, utility customers' data, there is very little doubt that the Court would have found the **nonconsensual collection** and transmission of such data, via wireless smart meters and pursuant to PPL's privacy policy and Commission-approved, *WPWG Technical Implementation Standard*, as **not** being among the "few exceptions" sufficient to pass Fourth Amendment muster as a reasonable, warrantless search of one's home. (See *Kyllo v. United States*, 533 U.S. at 31.)

PPL's collection, at intervals of 15 minutes and through the use of smart meter technology, of aggregate quantities of more of the Complainants' usage data than is customary and minimally necessary for generating a monthly bill constitutes a search under the Fourth Amendment. PPL's 24/7 collection of the Complainants' data, which is mandated to occur at intervals of 15 minutes or less **with no lower limit**, and such that, without the Complainants' consent, **their data may be shared by PPL with third parties** who may de-anonymize and disaggregate that data, constitutes an abridgement and deprivation of the Complainants' Fourth Amendment right to a reasonable expectation of privacy.

If, pursuant to the Pennsylvania Public Utility Commission's policy mandating smart meters, and thus acting under color of law as a state actor or agent of an agency of the State, PPL proceeds—by means of threatening to terminate our access to vital electric service—to coerce our consent to the installation on our home of an AMI wireless smart meter device, PPL's subsequent use of that device, in perpetually collecting and transmitting from our home more data with content of a personal and private nature than is customary and minimally necessary for generating a monthly bill, shall be ***without our consent*** and shall constitute **electronic surveillance** as defined and expounded under 50 U.S.C. 36, Subchapter I, §§ 1801(f), 1809(a), 1810, and 1812.

On pp. 309-365 and pp. 377-384 of their **Amended Complaint** (https://www.puc.pa.gov/pcdocs/1636175.pdf), and on pp. 317-381 of their **Motion in Opposition to PPL's Motion in Limine** (https://www.puc.pa.gov/pcdocs/1660960.pdf), the Complainants have presented their case concerning matters of privacy of smart meter data in much greater and more complete detail.

IV. SUMMARY

The right to protect oneself from harm, *possible* harm, and/or risk of harm is the most fundamental of individual liberties without which health, happiness and the enjoyment of life would be unduly burdened and unjustifiably made difficult or impossible.

The picture emergent from the pattern established by these proceedings vividly illustrates why **no government, and no persons, regardless of what they may be persuaded to believe, should have the authority or wield power so profound as to have determination and control over matters of health and well-being of others so as to decide even the conditions under which they must live in their own homes. For if those with such power are wrong in their belief, they shall have been party to the commission of a terrible injustice and moral crime against their fellow human beings in the misguided exercise of that power.**

In support of the Exceptions brought forth before the Commission, the Complainants assert the following:

1. In accordance with Title 66 of the PA Consolidated Statutes § 2807(f)(2)(iii) and § 2807(f)(7), the phrase, 'depreciation schedule not to exceed 15 years', referenced in Provision (iii) of Paragraph 2, applies specifically to **new** smart meter technology, and the Commission's policy mandating smart meters is thus founded upon a misconstruction of the legislative intent and direction given by the PA General Assembly in its enactment of Act 129 into law.

2. Act 129 neither compels nor permits the PA Public Utility Commission to adopt an interpretation of Title 66 § 2807(f)(2) and § 2807(f)(7) under the Act as a mandate that would require PPL and other public electric utilities in the state to install AMI wireless smart meters on the homes and properties of customers who do not want or do not consent to them. One would have to read text into the statute that is not already there to reach the Commission's conclusion that smart meters are mandatory.

3. The PA Public Utility Commission exceeded its statutory authority by making the installation of AMI wireless smart meters mandatory for all customers of PPL and other of the state's public electric utilities.

4. Title 52 of the Pa. Consolidated Statutes § 56.81(3) and Title 66 § 1406(a)(4) apply to meters, only to meters, and to nothing but meters, that is, to devices with the functional capability of doing nothing more or other than to measure electric power usage such that electric utility companies are able to bill according to the actual amount of electricity used. These statutes do NOT apply to powerful, RF radiation-emitting and RF signal-transmitting antennas or to whatever multiplicity of devices the State and/or electric utilities may decide to package together and conveniently call a 'meter'.

5. Pursuant to Title 52 of the Pa. Consolidated Statutes § 56.81(3) and Title 66 § 1406(a)(4), PPL has threatened to terminate the Complainants' access to electric service solely on the basis of our not giving consent to the Company's installation of AMI wireless smart meters on our homes.

> Under these statutes, a termination of service is authorized for a customer's "[f]ailure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading."

6. The Complainants have ***never*** denied PPL Electric Utilities access to the company's meter for any purpose **that is properly and conclusively *proven* to be *safe*** and which would not deprive or be in violation of the Complainants' fundamental rights. This includes allowing PPL access for the purpose of replacement of the meter.

7. The Complainants simply have denied the company permission to install a powerful, FCC-regulated, RF radiation-emitting and RF signal-transmitting device which is far more than merely a meter and for which **there is no reliable medical or scientific evidence upon which to conclude that chronic, long-term exposure to the radiofrequency radiation and RF fields produced as a result of the installation of such metering devices could not, cannot, would not and will not cause, exacerbate or contribute to biological or adverse health effects.**

8. In its actions to compel the Complainants' consent by means of threats and coercion, while also acting pursuant to the Commission's policy mandating wireless smart meters, PPL has acted under color of law as an agent of the State and is, according to the U.S. Supreme Court's State Action Doctrine, a 'State actor'.

9. PPL's actions pursuant to the Commission's policy of mandating the installation of smart meters would force the Complainants' properties to be used by PPL for purposes other than the collection of the Complainants' electricity usage data. That is, the Commission's policy would allow PPL to forcibly use its AMI wireless smart meters on the Complainants' homes as "relay points to transmit data" that does not originate from the Complainants' properties. PPL, **acting with the imprimatur either of the Commission or of the State itself**, thus would be given usage of the Complainants' properties without such usage having been granted either by the existing easement or by the Complainants' informed consent. PPL's actions and the Commission's policy pursuant to Act 129 therefore violate the Complainants' property rights protected under the Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States.

10. PPL Electric Utilities does **not** have the statutory authority or right to site powerful, radiofrequency radiation-producing, RF-transmitting, data communications devices on the Complainants' properties and to thereby physically affect or cause physical alteration to the ***interior*** environments of the Complainants' homes by means of the production of RF electromagnetic fields, and/or conducted emissions ('high-frequency voltage transients') and/or frequent transmissions of modulated radiofrequency radiation which would add to the already-existing RF radiation burden from other outside sources including area cell phone towers, other smart meters and facilities in the utility company's AMI mesh network, etc.

11. Without the Complainants' consent, PPL Electric Utilities does ***not*** have the statutory authority or right, pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), to **use** the Complainants' homes, and by and through such direct use of the Complainants' own premises, physically alter their living environments in any way which possibly could **increase** their **risk** of sustaining biological or adverse health effects.

12. Without the Complainants' consent, PPL Electric Utilities does ***not*** have the statutory authority or right, pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), to **use** the Complainants' homes, and from their own premises, irradiate them in perpetuity ***as a condition of their continuing to have access to electric service***.

13. The findings by the WHO / IARC (International Agency for Research on Cancer), on the basis of sufficient scientific evidence that RF radiation is a Group 2B, possible human carcinogen, coupled with the findings reported in the highly peer-reviewed, final report of the U.S. National Toxicology Program (NTP) of "clear evidence" of cancer causation in animal test subjects as a result of their exposure to RF radiation, establishes RF radiation as an agent that is capable, through mechanisms other than the thermal heating of tissues, of adversely affecting biological systems at non-thermal levels, that is, at levels below the FCC safety guidelines.

14. To forcibly subject persons to chronic, long-term exposure to a definitely possible human carcinogen, is to forcibly subject them to chronic, long-term exposure very possibly to a definite human carcinogen.

15. Without the Complainants' consent, PPL Electric Utilities does ***not*** have the statutory authority or right, pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), to **use** Complainants' homes in such a way as to irradiate them in perpetuity ***from their own premises*** with what has been found by IARC, on the basis of sufficient scientific evidence, to be ***a Group 2B possible human carcinogen***.

16. Without the Complainants' consent, PPL Electric Utilities, acting pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), has no statutory authority or right, by the company's use of Complainants' homes or properties, to increase the Complainants' risk—***no matter how small***—of biological or adverse health effects as a condition of their having access to electric service.

17. Without the Complainants' consent, the Pennsylvania Public Utility Commission, acting pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), has no statutory authority or right, through PPL Electric Utilities' use of the Complainants' homes or properties, to increase the Complainants' risk—no matter how small—of biological or adverse health effects as a condition of their having access to electric service.

18. PPL's use of RF-emitting, wireless smart meter devices, in forcibly subjecting the Complainants in perpetuity to the hazards and risks that much scientific research has found to be associated with RF radiation and RF fields, would deprive the Complainants of their most fundamental and basic human right to act to protect themselves from harm, possible harm, and/or risk of harm and so would violate this right which is protected under the Ninth and Fourteenth Amendments to the Constitution of the United States.

19. As clearly enunciated by the U.S. Supreme Court, electricity is a necessity of modern life, and PPL's action to terminate the Complainants' access to electric service, solely on the basis of the Complainants not consenting to the installation of wireless smart meter devices on their homes or properties, would constitute a **cruel and unusual punishment** and would violate the Complainants' rights protected under the Eighth and Fourteenth Amendments to the Constitution of the United States.

20. PPL's collection, at intervals of 15 minutes and through the use of smart meter technology, of aggregate quantities of more of the Complainants' usage data than is customary and minimally necessary for generating a monthly bill constitutes a search under the Fourth Amendment. PPL's 24/7 collection of the Complainants' data, which is mandated to occur at intervals of 15 minutes or less **with no lower limit**, and such that, without the Complainants' consent, **their data may be shared by PPL with third parties** who may de-anonymize and disaggregate that data, constitutes an abridgement and deprivation of the Complainants' Fourth Amendment right to a reasonable expectation of privacy.

From the fact of its having appealed the Commonwealth Court's detailed and very well-reasoned decision in *Povacz* to the PA Supreme Court, it has become even more obvious that the PUC's primary interest regarding these matters certainly has NOT been the protection of public health and safety. Rather, the Commission's primary concern has continued to be the protection of other interests by its having acted with extraordinary insistence and tenacity to preserve, at all costs, its misguided smart meter policy, which was based upon the Commission's own manifestly flawed interpretation of the legislative intent of the Pennsylvania General Assembly as such had been set forth and expressed in the language of Act 129.

As demonstrated by an abundance of facts and deeds, the Pennsylvania Public Utility Commission heretofore has thus shown itself to exemplify the very definition of 'captured agency.'

V. CONCLUSION

For the reasons set forth above, the Complainants respectfully request that the Commission grant these Exceptions and issue a Final Order that rejects the ALJ's Initial Decision of September 22, 2020 and orders PPL Electric Utilities to grant Complainants an accommodation that is in accordance with Section 1501 and which is reasonable and consistent with not only the guidance set forth by the Pennsylvania Commonwealth Court in *Povacz*, but also the actual and true legislative intent of the Pennsylvania General Assembly as set forth in Act 129, such that the Complainants are permitted to simply retain the wired electric meters that are presently installed on their homes.

Respectfully submitted,

Complainants

Dated: November 24, 2023

ATTACHMENT I

STATE ACTION DOCTRINE

In *Jackson v. Metropolitan Edison Co*., 419 U.S. 345 (1974), "a customer sued a privately owned utility under the Civil Rights Act of 1871 for improperly shutting off her service without providing her notice or a hearing. The Supreme Court asked whether there was a close enough nexus between the state and the utility for the acts of the latter to be treated as those of the former. Although the utility was heavily regulated by the state, it was held not to be a state actor. The Court reasoned that the provision of utility service is not generally an 'exclusive prerogative of the State.' Also absent was the symbiotic relationship between the utility and the state found in previous cases." (Congressional Research Service, CRS Report for Congress, Document R42338, February 3, 2012.)

"Though its holding [in *Jackson*] was broad **the Court did not foreclose the possibility that a privately owned utility could be a state actor under different circumstances**." (CRS Report for Congress, Document R42338, supra.) (Emphasis added.)

"Faithful adherence to the 'state action' requirement of the Fourteenth Amendment requires careful attention to the gravamen of the plaintiff's complaint." *Blum v. Yaretsky*, 457 U.S. 991, 1003 (1982).
"[T]he inquiry must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself." *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351.

"Our cases have accordingly insisted that the conduct allegedly causing the deprivation of a federal right be fairly attributable to the State. These cases reflect a two-part approach to this question of 'fair attribution.' First, the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible. ... Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State." *Lugar v. Edmondson Oil*, 457 U.S. 922 (1982).

In *Lugar v. Edmondson Oil*, 457 U.S. 922, 942 (1982), the Court stated:

> "[W]e have consistently held that a private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a 'state actor' for purposes of the Fourteenth Amendment. The rule in these cases is the same as that articulated in *Adickes v. S. H. Kress & Co.*, supra, at 152, in the context of an equal protection deprivation:
>
> > "'Private persons, jointly engaged with state officials in the prohibited action, are acting "under color" of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents,'" quoting *United States v. Price*, 383 U.S., at 794."

"[I]f the government coerces, influences, or encourages the performance of the act, it is state action." https://en.wikipedia.org/wiki/State_actor (See e.g., *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982).)

"Relying on Flagg Brothers, Inc. v. Brooks, 436 U.S. 149 (1978); Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974); Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972); and Adickes v. S. H. Kress Co., 398 U.S. 144 (1970), the Court held that, 'a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.'" Rendell-Baker v. Kohn, 457 U.S. 830, 839 (1982).

A state can be held liable for exercising coercive power or significantly encouraging, either overtly or covertly, a private party. *Blum v. Yaretsky*, 457 U.S. 991 at 1002-03 (1982).

"Not even the fact that the actions of the state agents are illegal under state law makes the action unattributable to the state for purposes of the Fourteenth Amendment."
https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/state-action#fn1344amd14

"Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." *United States v. Classic*, 313 U.S. 299, 326 (1941).

"Actions of the state that are considered in any analysis should include passive as well as active state involvement. The essential ingredient in this respect is knowledge. If the state is cognizant of the challenged activity and chooses not to prevent it, then for all purposes encouragement of the activity is taking place." *The State Action Doctrine in State and Federal Courts*, Hala Ayoub, Florida State University Law Review, Vol. 11, 1984.

In a letter, dated January 16, 2018, and addressed to us, Sheila Ketterer, PPL Director of Advanced Metering & Data Operations, responding directly on behalf of Gregory Dudkin, President and Director of PPL Electric Utilities Corporation, stated: "**Pennsylvania Act 129**, passed into law in 2008, **requires electric utilities** with more than 100,000 customers **to provide those customers with advanced meters** that have specific capabilities. **PPL Electric Utilities ... is subject to this requirement. The specific language, found in Section 3 of the law, says utilities 'shall furnish' these meters. Act 129 does not include language allowing either customers or utilities to opt out of advanced meter installation.** As a result, we cannot honor customers' requests not to replace their meters." (Emphasis added.)

Ms. Ketterer, on behalf of Mr. Dudkin, thus has asserted that the actions of PPL in this matter are, and have been, **compelled** by the State.

As has been shown under Section II of this Complaint, "The Commission's Misconstruction of the Prevailing Legislative Intent of the Pennsylvania General Assembly," it is *not* the enactment of Pennsylvania's Act 129 by the state legislature which is responsible for the mandating of state-wide installation of wireless smart meters. Rather, it is the Pennsylvania Public Utility Commission which bears that responsibility with its no-opt-out implementation policy based entirely on its misconstruction of the explicitly-expressed legislative intent of the Pennsylvania General Assembly. (That explicitly-expressed legislative intent, which is on public record, was that smart meters were not mandated and would not be mandated.) By this means, the Commission has directly

insinuated its own interests and intent into the actions of the state's electric utility companies with regard to the mandatory installation of wireless smart meter devices and technology, which never have been studied or tested specifically for biological or adverse health effects and which the Commission and PPL Electric Utilities have forced upon customers and the public at large without their informed consent.

By virtue of PPL Electric's actions directly pursuant to the Pennsylvania Public Utility Commission policy and implementation **order mandating system-wide** installation of smart meters, the Company's "conduct has sufficiently received the imprimatur of the State so as to make it 'state' action for purposes of the Fourteenth Amendment." *Blum v. Yaretsky*, supra. See also *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149 (1978); *Jackson v. Metropolitan Edison Co.*, supra; *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972); *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970).

In a dissenting opinion on the divergence of the Court's analysis of 'state action' in *Jackson v. Metropolitan Edison* from that in *Burton v. Wilmington Parking Authority*, 365 U.S. 715, (1961), Justice Douglas wrote:

[Justice Douglas dissent - Begin quote]

> ... May a utility have complete immunity under federal law when the State allows its regulatory agency to become the prisoner of the utility or, by a listless attitude of no concern, to permit the utility to use its monopoly power in a lawless way?
> ...
> In Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961), we said: "Only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance." Id., at 722. A particularized inquiry into the circumstances of each case is necessary in order to determine whether a given factual situation falls within "the variety of individual-state relationships which the [Fourteenth] Amendment was designed to embrace." Ibid. As our subsequent discussion in Burton made clear, the dispositive question in any state-action case is not whether any single fact or relationship presents a sufficient degree of state involvement, but rather whether the aggregate of all relevant factors compels a finding of state responsibility. 2 Id., at 722-726. See generally Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972).
> ...
> It is not enough to examine seriatim each of the factors upon which a claimant relies and to dismiss each individually as being insufficient to support a finding of state action. It is the aggregate that is controlling.
> ...
> ... In the present case, however, respondent is not just one person among many; it is the only public utility furnishing electric power to the city. When power is denied a householder, the home, under modern conditions, is likely to become unlivable.
>
> Respondent's procedures for termination of service may never have been subjected to the same degree of state scrutiny and approval, whether explicit or implicit, that was present in Public Utilities Comm'n v. Pollak, 343 U.S. 451 (1952). Yet in the present case the State is heavily involved in respondent's termination procedures, getting into the approved tariff a requirement of "reasonable notice." Pennsylvania has undertaken to regulate numerous aspects of respondent's operations in some detail, 5 and a "hands-off" attitude of permissiveness or neutrality toward the operations in this case is at war

with the state agency's functions of supervision over respondent's conduct in the area of servicing householders, particularly where (as here) the State would presumably lend its weight and authority to facilitate the enforcement of respondent's published procedures. Cf. Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970); Reitman v. Mulkey, 387 U.S. 369 (1967); Railway Employes' Dept. v. Hanson, 351 U.S. 225 (1956); Shelley v. Kraemer, 334 U.S. 1 (1948).

In the aggregate, these factors depict a monopolist providing essential public services as a licensee of the State and within a framework of extensive state supervision and control. The particular regulations at issue, promulgated by the monopolist, were authorized by state law and were made enforceable by the weight and authority of the State. Moreover, the State retains the power of oversight to review and amend the regulations if the public interest so requires. Respondent's actions are sufficiently intertwined with those of the State, and its termination-of-service provisions are sufficiently buttressed by state law to warrant a holding that respondent's actions in terminating this householder's service were "state action" for the purpose of giving federal jurisdiction over respondent under 42 U.S.C. 1983.

...

...

Section 1983 was designed to give citizens a federal forum 6 for civil rights complaints wherever, by direct or indirect actions, a State, acting "in cahoots" with a private group or through neglect or listless oversight, allows a private group to perpetrate an injury. The theory is that in those cozy situations, local politics and the pressure of economic overlords on subservient state agencies make recovery in state courts unlikely. ...

Section 1983 addresses itself to grievances inflicted "under color of any statute, ordinance, [or] regulation . . . of any State . . . ." The regulatory regime imposed by Pennsylvania on respondent utility seems to fit this statute like a glove. Electrical service, being a necessity of life under the circumstances of this case, is an entitlement which under our decisions may not be taken without the requirements of procedural due process. Fuentes v. Shevin, 407 U.S. 67, 80 (1972); Goldberg v. Kelly, 397 U.S. 254 (1970); Palmer v. Columbia Gas of Ohio, Inc., 479 F.2d 153 (CA6 1973).

...

2 The court below in Burton had relied heavily on a number of facts indicating minimal state involvement, but we regarded that court's analysis as unduly restricted in its scope: "While these factual considerations are indeed validly accountable aspects of the enterprise upon which the State has embarked, we cannot say that they lead inescapably to the conclusion that state action is not present. Their persuasiveness is diminished when evaluated in the context of other factors which must be acknowledged." 365 U.S., at 723. After discussing those additional factors in greater detail, we concluded: "Addition of all these activities, obligations and responsibilities of the Authority, the benefits mutually conferred, together with the obvious fact that the restaurant is operated as an integral part of a public building devoted to a public parking service, indicates that degree of state participation and involvement in discriminatory action which it was the design of the Fourteenth Amendment to condemn." Id., at 724.

...

5 The Public Utility Commission is given extensive control over utility rates, Pa. Stat. Ann., Tit. 66, 1141 et seq. (1959 and Supp. 1974-1975), and over the character and quality of utility services and facilities, 1171, 1182-1183; it is given broad power to receive and investigate complaints, 1391, 1398,

and to regulate and supervise the activities, rules, and contractual undertakings of utilities, 1171, 1341-1343, 1360.

6 There is no requirement for an exhaustion of state remedies before suing under 1983 (see Wilwording v. Swenson, 404 U.S. 249 (1971)), though suggestions for statutory changes in that regard have been made. Judd, The Expanding Jurisdiction of the Federal Courts, 60 A. B. A. J. 938, 941 (1974)."

[Justice Douglas dissent - End quote] (Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).)

In *Braden v. University of Pittsburgh*, 552 F.2d 948, 956-58 (1977), the U.S. Court of Appeals for the Third Circuit held:

[Third Circuit opinion - Begin quote]

II. STATE ACTION.

... It is incumbent upon this Court to determine which, if either, of these cases Burton or Jackson may control the present situation and, in so doing, whether Jackson has superseded Burton as the preeminent declaration on state action with respect to circumstances such as we have here.

In Burton, the Court held that a private restaurant owner who refused service to a customer because of his race, violated the Fourteenth Amendment where the restaurant was located in a building owned by a state-created parking authority and leased from that authority. After a thorough review of the relationship between the restaurant and the authority, the Supreme Court concluded that the state had "so far insinuated itself into a position of interdependence with (the restaurant) that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment."[40] It is thus apparent that the dispositive factor in Burton, with respect to the state action issue, was the extent and nature of the overall relationship between the state agency and the private enterprise.

Decided thirteen years after Burton, Jackson concerned a different type of nongovernmental entity, namely, a privately owned and operated utility corporation. The utility was, however, subject to extensive state regulation in many particulars of its business. When the utility company terminated the electric service of a customer without notice, without a hearing, or without an opportunity to pay any amounts due, the customer charged that she had been denied due process. The Supreme Court rejected the due process claim on the ground that, since state action was not present, the utility was exempt from constitutional commands. It held that the Commonwealth of Pennsylvania was not sufficiently connected with the challenged termination to make the conduct of the private utility corporation attributable to the state for purposes of the Fourteenth Amendment.

Important to the inquiry here is the analytical formula set forth in Jackson respecting state action. For the Supreme Court stated there that, when considering the vexing state action issue, the "inquiry must

be whether there is a sufficiently close nexus between the state and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself."[41]

Appellants maintain that this "close nexus" test, rather than the "relationship" approach of Burton, should be applied in the case at bar. They contend that, for state action to exist, the Commonwealth must be closely involved with the challenged employment practices of the University. In so arguing, appellants imply that the vitality of Burton has been severely undermined by Jackson, and that the existence of a pervasive relationship between the Commonwealth and the University is not, standing alone, sufficient to undergird a ruling of state action.[42] While Jackson may invite some concern as to the present status of Burton, we do not find appellants' reading of these cases to be convincing. To the contrary, in our view, Burton retains viability, and so its teachings may well bear on the present inquiry.

Based on a review of the Supreme Court's opinion in Jackson, we believe that that decision would not preclude application of the precepts of Burton here, should the appropriate state-private relationship exist. Instead of overruling Burton, the Jackson Court merely distinguished the earlier opinion, finding "absent in (Jackson) the symbiotic relationship presented in Burton . . . ."[43] The implication arising from such efforts at differentiation is not that Burton was supplanted by Jackson, but rather that Burton remained as a powerful precedent with which the Court had to contend. Moreover, the Jackson opinion repeatedly cites Burton with apparent approval,[44] hardly sounding the death knell for Burton that the appellants would have us perceive.

It may be that only in the absence of an inextricably-linked relationship between the state and a private entity does the "close nexus" test of Jackson come into play. Where a private enterprise stands, in its operations, as a veritable partner with the state, then it seems proper to hold such enterprise subject to the same constitutional requirements to which the state is accountable. ... [A]s we understand it, Burton and Jackson stand as two models of state-action analysis that have been designed by the Supreme Court to date, with the applicability of either approach resting on the type of setting which may be present.[46]

... Indeed, the Supreme Court declared in Burton that "only by sifting facts and weighing circumstances . . ." can matters turning on state action be resolved.[47] And such emphasis on the factual elements was echoed in Jackson as well.[48]

...

Not only does it appear that the state in this situation, as in Burton, has "insinuated itself into a position of interdependence" with Pitt, but it seems to be a "joint participant" ... as well.

...

It should be observed that Jackson was decided immediately after the opinion in Isaacs was rendered. Since Isaacs so heavily relies, quite properly, on Burton, the analysis presented by Judge Higginbotham remains valid only so long as Jackson is not construed to overrule or devitalize Burton. As we fail to so read Jackson, the principles espoused in Isaacs remain supportive of the conclusion reached by the trial judge that state action cannot be ruled out summarily in the case at bar.

...

Having concluded that Burton retains vitality, we must examine the available materials concerning the nature and extent of the connection ... . Indeed, the Supreme Court declared in Burton that "only by

sifting facts and weighing circumstances . . ." can matters turning on state action be resolved.[47] And such emphasis on the factual elements was echoed in Jackson as well.[48]

...

40 365 U.S. at 725, 81 S. Ct. at 862
41 419 U.S. at 351, 95 S. Ct. at 453
42 See Brief for Appellants at 20-25
43 419 U.S. at 357, 95 S. Ct. at 457
44 See, e. g., id. at 350, 351, 95 S. Ct. 449

This Court has, on a number of previous occasions, indicated that Burton is very much a viable precedent. See, e. g., Broderick v. Associated Hospital Service of Philadelphia, 536 F.2d 1, 4 (3d Cir. 1976); Magill v. Avonworth Baseball Conference, 516 F.2d 1328, 1332 (3d Cir. 1975).

46 Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972), though decided before Jackson, indicates that a bipartite approach to state action is the proper one. In declining to find state action in Moose Lodge, the Court seemingly invoked both the "close nexus" and "overall relationship" formulas:

However detailed this type of (private club) regulation may be in some particulars, it cannot be said to in any way foster or encourage (the) discrimination. Nor can it be said to make the State in any realistic sense a partner or even a joint venturer in the club's enterprise."

Id. at 176-77, 92 S. Ct. at 1973.

The Supreme Court has, of course, fashioned other analytical frameworks to deal with state action problems of a different complexion. See, e. g., Hudgens v. N.L.R.B., 424 U.S. 507, 96 S. Ct. 1029, 47 L. Ed. 2d 196 (1976); Evans v. Newton, 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966); Marsh v. Alabama, 326 U.S. 501, 66 S. Ct. 276, 90 L. Ed. 265 (1946).

47 365 U.S. at 722, 81 S. Ct. at 860
48 419 U.S. at 351, 95 S. Ct. 449

[Third Circuit opinion - End quote]

"Utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety." (Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1 (1978).)

In its analysis following upon that in *Burton v. Wilmington*, the U.S. Court of Appeals for the Sixth Circuit, in *Palmer v. Columbia Gas of Ohio*, 479 F.2d 153 (1973), held:

[Sixth Circuit opinion - Begin quote]

STATE ACTION

...

... When a privately owned company enjoying a monopoly is in the business of providing a necessity of life it cannot, for purposes of evaluating its relationship to its customers and to the state in which and under whose control it operates, be considered as an independent, free market, common law competitor.

...
The parties are not upon equal ground. ... The consumer, once taken on to the system, becomes dependent on that system for a prime necessity of business, comfort, health, and even life.
...
Virtually every aspect of this company's operations are subject to the dictates of state statute or to the regulation15 of the Public Utilities Commission ... .
...
The important factor is not the number of statutes and regulations which pertain to the operation of a utility company, but the extent to which the state has reserved power to control the operations of a public utility, and the amount of power given to the utility which is usually reserved to the state.
...
[T]he state has granted to utilities powers not usually possessed by private corporations. ...

In addition, we must consider the fact that the furnishing of natural gas to the citizens ... is a legitimate public function which itself has been held to satisfy the state action requirement; when a public function is performed by a private firm whose freedom of decision making has been restricted by governmental regulation and whose freedom of action has been severely circumscribed, the actions of the otherwise private firm become subject to the constitutional limitations placed upon state action. ... When private individuals or groups are endowed by the state with functions or powers which are of a governmental nature, they become instrumentalities of the state and thus are subject to its constitutional limitations. Evans v. Newton, 382 U.S. 296, 299, 86 S.Ct. 486, 15 L.Ed.2d 373 (1966).

In summary, inasmuch as the operations of the appellant company are fully circumscribed by an all-encompassing system of state statutes ... and the supervision of the state regulatory authority, and inasmuch as the state ... is significantly involved in virtually every one of the company's activities, including the specific activity complained of, the conclusion that the regulatory activities of the state have insinuated it into a position of interdependence with the company so that it must be recognized as a joint participant with the company is inescapable. Burton, supra, 365 U.S. at 725, 81 S.Ct. 856.

[Sixth Circuit opinion - End quote]

Regardless of which line of analysis is followed pursuant to the *State Action Doctrine*, either that deriving from *Burton*, or that applied in *Jackson*, it is clear that the Commission's policy of mandatory installation of AMI wireless smart meters is such that, in addition to willful acquiescence, there absolutely does exist sufficient involvement, influence, knowledge, and sanctioning by the Commission in the conduct engaged in by PPL Electric Utilities against the Complainants and the citizens of this Commonwealth to establish that the PPL Electric has acted and is acting, along with the Commission, under color of law as an agent of the State and is thereby a 'state actor'.

(END ATTACHMENT)

ATTACHMENT II

SELECT QUOTATIONS

of the PA Commonwealth Court
in *Povacz, et al. v. Pennsylvania Public Utility Commission*
241 A.3d 481 (Pa. Cmwlth. 2020)

The PA Supreme Court's Aug. 2022 (*'Povacz II'*) ruling on this issue notwithstanding, the PA Commonwealth Court, by its careful analysis and more thorough scrutiny of the language of Act 129, soundly repudiated the Pennsylvania Public Utility Commission's policy of mandating smart meters pursuant to the Commission's incorrect interpretation of the legislative intent of the Pennsylvania General Assembly as set forth under Act 129.

> "Act 129 mandates that an electric distribution company, such as PECO, 'shall furnish smart meter technology . . . in accordance with a depreciation schedule not to exceed 15 years.' 66 Pa.C.S. §2807(f)(2)(iii). However, **nothing in the statutory language affirmatively mandates that customers must allow installation of wireless smart meters**." (Emphasis and underlining added.)
>
> "To 'furnish' means 'to provide with what is needed; . . . supply, give.' Webster's Ninth New Collegiate Dictionary 499 (1985). The definition does not imply that the recipient is forced to accept that which is offered. Therefore, we find the PUC is incorrect in concluding that Act 129 facially precludes any customer refusal of installation of smart meters.
> "Act 129 requires an electric distribution company to 'furnish smart meter technology,' 66 Pa.C.S. § 2807(f)(2)(iii), but does not require every customer to avail himself of every aspect of that technology. Notably, several provisions of Act 129 seem to contemplate customer choice in the degree to which the smart meter technology is used."
> ...
> "In addition, as Consumers correctly argue, Act 129's definition of 'smart meter technology' leaves the door open for accommodations of customer requests to avoid RF emissions from smart meters."
> ...
> "[A]lthough Act 129 does appear to anticipate installation of smart meters on customers' premises, **nothing in the language of Act 129 facially *requires* every customer to endure involuntary exposure to RF emissions from a smart meter**. Rather, the language of Act 129 seems calculated to support customer ***choice*** in the use of smart meter technology. Therefore, we conclude that Act 129 does not preclude either PECO or the PUC from accommodating a customer's request to have RF emissions from that customer's meter turned off, ... or some other reasonable accommodation. We reverse that portion of the PUC's decisions finding it lacked authority for accommodations of customers' requests to avoid RF emissions. We remand to the PUC to allow consideration of Consumers' requests for accommodations ... ." (Emphasis and underlining added.)
> ...
> "[T]he PUC's position that Act 129 requires installation of wireless smart meters in all consumer residences is incorrect. Accordingly, the PUC is also incorrect in finding that PECO may not or need not offer any accommodation to Consumers.

"Because this portion of the PUC's decision is dependent on its erroneous conclusion that Act 129 does not allow accommodations, we vacate this portion of the PUC's decision and remand for further consideration."

...

"[I]n considering accommodations to Consumers on remand, the PUC should consider whether accommodations are appropriate ***without*** proof of harm, so that Consumers may choose to avoid RF emissions from wireless smart meters ... ."

...

"... [T]he PUC appears to have based its decision largely on its conclusion that Act 129 mandated installation of wireless smart meters on every residence and did not permit the PUC to grant ***any*** form of relief to Consumers to accommodate their desire to avoid RF emissions. On remand, the PUC should consider whether reasonable accommodations should be provided in light of the conclusion that Act 129 does not preclude such accommodations of customers' health concerns, regardless of proof of harm."

...

"... We reverse the PUC's conclusion that it lacks authority to accommodate Consumers' desire to avoid RF emissions from smart meters and vacate the PUC's determination that such accommodation would not be reasonable. ... **On remand, the PUC should consider all reasonable accommodations, including, but not limited to, deactivation of the RF emitting functions of the smart meters; ... and installation of wired rather than wireless smart meters, if (as Consumers contend) such technology is available**." (Emphasis and underlining added.)

(END ATTACHMENT II)

ATTACHMENT III

TESTIMONIES GIVEN BY EMINENT SCIENTIFIC AND PUBLIC HEALTH EXPERTS ON MATTERS CONCERNING SMART METER SAFETY

These documents are public documents on file with the FCC. They originally were filed under Maine PUC Docket No. 2011-00262. A number of them are among the exhibits in the Complainants' Amended Complaint.

Close reading of these documents would make it abundantly clear to any rational, reasonable person that existing scientific and medical evidence has shown it to be incontrovertibly the case and beyond reasonable doubt that RF radiation and electromagnetic fields (EMFs) produced by smart meters at levels below the current, long-outdated, FCC safety guidelines can, and do, cause adverse biological effects and pose very real and substantial risks to public health and safety.

https://www.fcc.gov/ecfs/document/6017465448/1	Testimony of Dr. Lennart Hardell, MD, PhD	(EXH. 1C)
https://www.fcc.gov/ecfs/document/6017465448/3	Testimony of Dr. De-Kun Li, MD, PhD, MPH	(EXH. 1F)
https://www.fcc.gov/ecfs/document/6017465448/2	Testimony of Dr. Dariusz Leszczynski, PhD, DSc	(EXH. 1E)
https://www.fcc.gov/ecfs/document/6017465449/1	Testimony of Dr. David O. Carpenter, MD	
https://www.fcc.gov/ecfs/document/6017465450/2	Testimony of Dr. Jerry L. Phillips, PhD	(EXH. 1D)
https://www.fcc.gov/ecfs/document/6017465450/1	Testimony of Lloyd Morgan, BSEE	(EXH. 1H)
https://www.fcc.gov/ecfs/document/6017339058/2	Testimony of Dr. William J. Rea, MD	
https://www.fcc.gov/ecfs/document/6017465452/1	Testimony of Girish Kumar, BSc, PhD	
https://www.fcc.gov/ecfs/document/6017465453/2	Testimony of Dr. Richard H. Conrad, PhD	(EXH. 1G)
https://www.fcc.gov/ecfs/document/6017465453/1	Testimony of Joshua Hart, MSc	

To be sure, on August 13, 2021 the U.S. Circuit Court of Appeals for the District of Columbia ruled the FCC ignored scientific evidence and failed to provide a reasoned explanation for its determination that its 1996 guidelines adequately protect the public against all the harmful effects of wireless radiation. (https://docs.fcc.gov/public/attachments/DOC-374936A1.pdf)

In that ruling, the Court stated:

> [Begin quote]
>
> In the Department of the Interior's expert view, the Commission's RF radiation limits "continue to be based on thermal heating, a criterion now nearly 30 years out of date and inapplicable today." J.A. 8,383. **"The [current environmental] problem," according to the Department of the Interior, "appears to focus on**

> **very low-level, non-thermal electromagnetic radiation."** *Id.* Although the Commission has repeatedly claimed that it considered "inputs from [its] sister federal agencies[,]" *2019 Order*, 34 FCC Rcd. at 11,689, the Commission entirely failed to address the environmental harm concerns raised by the Department of the Interior. (Emphasis added.)

[End quote]

"FCC limits are based on the outdated belief that heating is the only proven harm from RF. Over 11,000 pages of evidence - 447 exhibits in 27 Volumes - was submitted to the Court documenting biological effects and illness from wireless radiation exposure at non-heating levels. Research has found brain damage, headaches, memory problems, reproduction damage, synergistic effects, nervous system impacts, brain cancer, genetic damage, as well as harm to trees, birds, bees, and wildlife." (*Environmental Health Trust, et al. v. FCC* Factsheet)

The Court found that the FCC did not provide evidence of properly examining record evidence indicating non-cancer harm such as

impacts to children
testimony of persons injured bywireless radiation
impacts to the developing brain
impacts to the reproductivesystem
impacts to wildlife and theenvironment

(END ATTACHMENT III)